

# **Role of Board and Superintendent**



# Role of School Board

## From the MSBA Website

As the entity legally charged with governing a school district, each school board is responsible to its community for governing efficiently and leading effectively to provide for equitable education, resulting in high student achievement.

**The following five standards are essential to being an effective, high-performing school board team.**

### **Standard 1: Conduct and Ethics**

The school board, as a whole, provides leadership to the community on behalf of the school district by conducting its business in a fair, respectful, legal, and responsible manner.

***An effective, high-performing school board strives to meet the following benchmarks:***

- A. Recognize the school board team consists of school board members and the superintendent and evaluates its performance at least annually.
- B. Take full responsibility for its activity and behavior at and away from the school board table.
- C. Encourage its members to express their individual opinions, respect others' opinions, and vote according to their convictions.
- D. Speak with one voice after reaching a decision.
- E. Spend time on board governance work rather than staff work — focuses on the ends not the means.
- F. Provide for orientation and ongoing training for all school board members.
- G. Follow established policies, including the chain-of-command, by directing people with concerns to the appropriate staff.
- H. Set an example of respectful and civil leadership.

### **Standard 2: Vision**

The school board, with community input, envisions the educational future of the community and then formulates the goals, defines the outcomes, and sets the course for the school district.

***An effective, high-performing school board strives to meet the following benchmarks:***

- A. Use clear, focused, attainable, and measurable goals and outcomes to support gains in student achievement.
- B. Develop a strategic plan which includes well-crafted school district belief statements, mission statement, vision statement, goals, and objectives that enable the school board to evaluate school district performance.
- C. Regularly monitor the strategic plan to evaluate progress toward goal achievement and school district success.
- D. Ensure that the school district belief statements, mission statement, vision statement, goals, and objectives are reflected in school board policies, mirrored in the budget planning and implementation efforts, and is supported district-wide.
- E. Communicate the strategic plan and the progress to the community.

### **Standard 3: Structure**

The school board, to achieve its vision, establishes organizational and physical structures for student and staff success.

***An effective, high-performing school board strives to meet the following benchmarks:***

- A. Create organizational and physical structures based on equity in which all students and staff have the resources and supports to maximize achievement.
- B. Advocate and provide for learning through rigorous curriculum, effective technology, and a safe and secure environment.
- C. Select and employ one person — the superintendent — as the school district’s chief executive officer to lead and manage the school district.
- D. Hold the superintendent accountable for school district performance and compliance with written school board policy.
- E. Delegate the authority to the superintendent to recommend and evaluate all school district staff within the standards established through written school board policies.
- F. Accept ultimate responsibility for the care, management, fiscal oversight, and control of the school district while understanding that the day-to-day operations will be conducted by the staff.

#### **Standard 4: Accountability**

The school board is accountable to the community for constantly monitoring the conditions affecting the school district as a whole.

***An effective, high-performing school board strives to meet the following benchmarks:***

- A. Recognize the duty to itself and the community to determine whether the authority delegated to the superintendent is being used as intended.
- B. Evaluate the superintendent’s performance at least annually.
- C. Use student achievement data and other indicators when available as the basis for assessing progress toward school district goals and compliance with school board policies and state and federal laws.
- D. Recognize the distinction between “monitoring data” (data used by the school board to address accountability) and “management data” (data used by the staff for operations).

#### **Standard 5: Advocacy and Communication**

The school board advances its vision at the local, regional, state, and national levels.

***An effective, high-performing school board strives to meet the following benchmarks:***

- A. Focus on community-wide concerns and values that best support equity and student achievement rather than being influenced by special interests.
- B. Develop communication strategies to build trust between the school board and the superintendent, staff, students, and community.
- C. Utilize a public relations strategy that supports the flow of information into and out of the school district.
- D. Engage and build relationships with both public and private stakeholders.
- E. Advocate on local, state, and national levels.



# Standards for School Board Leadership

## The Role of the School Board

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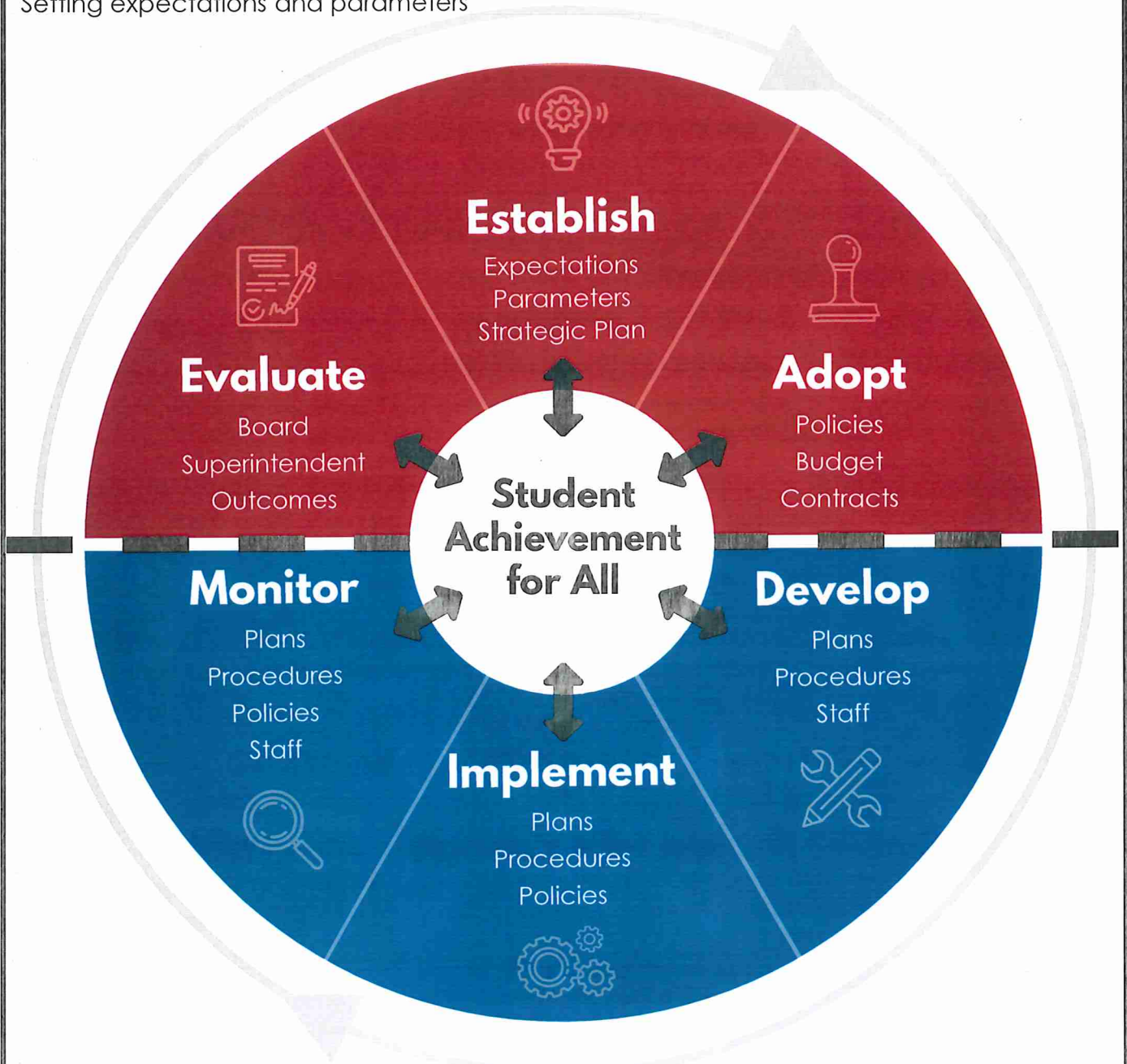
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# Board Governance Model

## The School Board Governs

Setting expectations and parameters



## The Superintendent Manages

Providing leadership and supervision





# RESPONSIBILITIES OF THE SCHOOL BOARD

## BOARD DUTIES

- Hire superintendent, who is an ex-officio member of the board, and delegate authority
- Oversight of human, financial, and facility resources
- Set policy and judicial review
- Collective bargaining
- Community relations and advocacy

## CHAIR DUTIES

- Per MN Statute
- Preside at all meetings M.S. 123B.14, Subd. 2
  - Represent district in all actions M.S. 123B.14, Subd. 2
  - Countersign orders M.S. 123B.14, Subd. 2
  - Is a voting member M.S. 130.01, Subd. 4
  - And all duties usually incumbent on such officer M.S. 123B.14, Subd. 2
  - Draw orders in absence of clerk M.S. 123B.14, Subd. 2

Per Best Practice

- Guide board process
- Develop agenda with superintendent
- First point of contact with superintendent

## VICE CHAIR DUTIES

Per Best Practice

- Exists per district policy
- Performs "chair duties" during absence of the chair
- Additional duties as assigned by the chair or board

## CLERK DUTIES<sup>1</sup>

Per MN Statute

- School district elections (notice, candidate filing, ballots, absenteees, returns, results) MSBA Service Manual Chapter 14
- Keep records, make and issue reports M.S. 123B.14, Subd. 7
- Draw orders for payments M.S. 123B.14, Subd. 7

**Note:** The MSBA Service Manual provides detail references and commentary on MN Statutes that affect school districts.

## TREASURER DUTIES<sup>1</sup>

Per MN Statute

- Make deposits M.S. 123B.14
- Pay bills M.S. 123B.12, 123B.26
- Promptly pay bills M.S. 471.425
- Make requested reports M.S. 123B.14
- And all duties usually incumbent on such officer M.S. 123B.14, Subd. 2

Per Best Practice

- Financial reporting oversight
- Financial procedure and controls oversight

<sup>1</sup> "... the board by resolution may combine the duties of the offices of clerk and treasurer in a single person in the Office of Business Affairs." Additionally, "The persons who perform the duties of the clerk and treasurer need not be members of the board." M.S. 123B.14, Subd. 1.  
In actual practice, that single person almost always delegates at least some of the duties to others.







*Where School Boards Learn to Lead*

## New Board Member Orientation Year At-a-Glance

The learning curve for new board members is high. New school board members must learn about their roles and responsibilities in providing effective leadership for the community in fulfilling its vision and mission for quality education for all students. In addition to the state-mandated training, MSBA recommends that the local school board chair assign each new board member a mentor. The mentor(s) and superintendent provide district-level orientation to the new school board members in order to provide a smooth transition into effective school board service. With this in mind, consider organizing the printed materials into an indexed notebook or orientation manual.

While printed materials are useful reference tools, they cannot take the place of personal interaction. School boards are encouraged to conduct learning sessions for new board members. These learning sessions should be conducted over several months so that the new board members have time to process the information and develop questions regarding their governance role.

The following suggestions are offered as guidance for mentors and superintendents who want to get new board members off to a good start. In addition, including all board members in the sessions may provide an opportunity for continued board professional development to strengthen governance practices. MSBA's website, [www.mnmsba.org](http://www.mnmsba.org), provides other resources and, as always, please contact your MSBA with any questions.

<b>Prior to First Board Meeting</b>	<b>New Board Member</b>	<b>Mentor</b>	<b>Superintendent</b>	<b>Board Admin. Assistant</b>
Schedule an orientation with the new board member(s), board chair, board mentor, and the superintendent	✓	✓	✓	✓
Assign/introduce the new board member(s) to their mentor(s)		✓		
Provide contact information to the board administrative assistant	✓			✓
Provide and explain electronic access and/or equipment, if needed		✓		✓
Register for MSBA training for new board members (Phase I/II)	✓			✓
Register for the MSBA Leadership Conference	✓			✓
Examine the board member resources on the MSBA website	✓	✓		
Communicate first board meeting details with new board members:				
<input type="checkbox"/> Date, time, and location of the meeting		✓	✓	
<input type="checkbox"/> Board packet delivery date, review method and expectations		✓	✓	



Prior to First Board Meeting, Cont'd	New Board Member	Mentor	Superintendent	Board Admin. Assistant
Review with new board member(s):				
<input type="checkbox"/> Board calendar (meeting dates - timelines)		✓		
<input type="checkbox"/> Procedures for taking oath of office at board organizational meeting		✓	✓	
<input type="checkbox"/> Board culture and climate		✓		
Explain the Open Meeting Law (Policy 205)		✓	✓	
Explain limits of electronic use for board communications including email, social media and texting		✓	✓	
Provide new board member(s) access to and/or copies of:				
<input type="checkbox"/> District policies		✓		✓
<input type="checkbox"/> District mission, vision and beliefs statements		✓	✓	
<input type="checkbox"/> District World's Best Workforce and strategic plan		✓	✓	
<input type="checkbox"/> Board goal statement		✓		
<input type="checkbox"/> District calendar		✓	✓	
<input type="checkbox"/> Provide board minutes from previous year				✓
Provide a hard copy and review the following policies:				
<input type="checkbox"/> Board meeting procedures and format (Policy 203.1)		✓		
<input type="checkbox"/> Agenda format - preparation and dissemination (Policy 203.5)			✓	
<input type="checkbox"/> Public participation at board meetings and chain of command (Policy 206)		✓	✓	
<input type="checkbox"/> Board policy development: adoption, review, evaluation and oversight (Policy 208)		✓	✓	
<input type="checkbox"/> Board member code of ethics (Policy 209)		✓		
<input type="checkbox"/> Review Conflict of Interest (Policy 210)		✓	✓	
<input type="checkbox"/> Use of committees/advisory groups (Policy 213)		✓	✓	
<input type="checkbox"/> Provide copies of discipline policy and/or student handbooks (Policy 506)				✓
Become familiar with district office and procedures:				
<input type="checkbox"/> Tour district office facilities and services			✓	
<input type="checkbox"/> Meet district office staff			✓	
<input type="checkbox"/> Board compensation and expense reimbursement policy, procedures and provide forms (expense voucher, etc.)				✓



<b>Within the First Three Months - January to March</b>	<b>New Board Member</b>	<b>Mentor</b>	<b>Superin- tendent</b>	<b>Board Admin. Assistant</b>
Explain the following board processes:				
<input type="checkbox"/> School board communication protocols		✓	✓	
<input type="checkbox"/> Process of communication between the board and superintendent, board and staff, among board members, board and media		✓	✓	
<input type="checkbox"/> Chain of command and procedures for responding to concerns from patrons/staff		✓	✓	
<input type="checkbox"/> Procedures for visiting schools		✓	✓	
<input type="checkbox"/> Procedures and authority for seeking advice from district legal counsel (Policy 202)		✓	✓	
<input type="checkbox"/> Expectations regarding board participation at district and community events		✓		
<input type="checkbox"/> Review process for school board self-evaluation		✓		
<input type="checkbox"/> Review strategic plan		✓	✓	
<input type="checkbox"/> Budget development, approval process, and adopted budget for the year		✓	✓	
Review documents related to superintendent's employment:				
<input type="checkbox"/> Employment contract		✓		
<input type="checkbox"/> Job description		✓	✓	
<input type="checkbox"/> Evaluation form process, criteria, and timeline		✓	✓	
Review process for development and approval of school calendar		✓	✓	
Review personnel related policies and documentation:				
<input type="checkbox"/> Provide copies of all master agreements and individual contracts			✓	
<input type="checkbox"/> PELRA			✓	
<input type="checkbox"/> Teacher Tenure 122A.40 - .41			✓	
Attend MSBA Leadership Conference	✓	✓	✓	✓
Register for MSBA Officers' Workshop and Phase III/IV	✓	✓	✓	✓

<b>Within Four to Six Months - April to June</b>	<b>New Board Member</b>	<b>Mentor</b>	<b>Superintendent</b>	<b>Board Admin. Assistant</b>
Provide a tour of the district campus to become familiar with locations of all buildings (maintenance and transportation facilities)		✓	✓	
Explain the status of district facilities: building maintenance projects; current and/or future construction projects			✓	
Prepare for school district graduation				
<input type="checkbox"/> Requirements (Policy 613)		✓	✓	
<input type="checkbox"/> Ceremonies and role of the school board		✓	✓	
Explain process and requirements of Meet and Confer		✓	✓	
Attend MSBA's Phase III/IV	✓	✓	✓	✓
<b>Within Seven to Nine Months - July to September</b>				
Explain key district instructional programs and assessments			✓	
Explain the district evaluation process for administrators, teachers and staff			✓	
Explain the current salary schedules and employee benefits			✓	
Plan to attend MSBA's learning opportunities				
<input type="checkbox"/> Register now for the MSBA Phase I/II training for new board members in August who haven't already attended	✓	✓	✓	✓
<input type="checkbox"/> Register for MSBA's Summer Seminar	✓	✓	✓	✓
<b>Within Ten to Twelve Months - October to December</b>				
Review the collective bargaining process, if applicable		✓	✓	
Review the process for developing and approving next year's budget		✓	✓	
Explain the procedures for program evaluation and curriculum review and revision processes			✓	
Explain programs for specialized populations ( e.g., Title I, ELL, gifted, preschool, special education) and the schedule for program review		✓	✓	
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Adopted: 8/16/10

NRHEG School Policy 201

Orig. 1995

Rev. 2009

Revised: \_\_\_\_\_

## **201 LEGAL STATUS OF THE SCHOOL BOARD**

### **I. PURPOSE**

The care, management, and control of the schools is vested by statutory and constitutional authority in the school board. The school board shall carry out the mission of the school district with diligence, prudence, and dedication to the ideals of providing the finest public education. The purpose of this policy is to define the authority, duties, and powers of the school board in carrying out its mission.

### **II. GENERAL STATEMENT OF POLICY**

- A. The school board is the governing body of the school district. As such, the school board has responsibility for the care, management, and control over public schools in the school district.
- B. Generally, elected members of the school board have binding authority only when acting as a school board legally in session, except where specific authority is provided to school board members or officers individually. Generally, the school board is not bound by an action or statement on the part of an individual school board member unless the action is specifically directed or authorized by the school board.

### **III. DEFINITION**

“School board” means the governing body of the school district.

### **IV. ORGANIZATION AND MEMBERSHIP**

- A. The membership of the school board consists of six elected directors, or seven if the school board has submitted the question to the electors and a majority have approved a seven-member school board. The term of office is four years.

*[Note: This number may be different for combining or consolidating school boards that are in a transition period.]*

- B. There may be other ex officio members of the school board as provided by law. The superintendent is an ex officio member.
- C. A majority of voting members constitutes a quorum. The act of the majority of a quorum is the act of the school board.

## V. POWERS AND DUTIES

- A. The school board has powers and duties specified by statute. The school board's authority includes implied powers in addition to specific powers granted by the legislature.
- B. The school board exercises administrative functions. It also has certain powers of a legislative character and other powers of a quasi-judicial character.
- C. The school board shall superintend and manage the schools of the school district; adopt rules for their organization, government, and instruction; prescribe textbooks and courses of study; and make and authorize contracts.
- D. The school board shall have the general charge of the business of the school district, its facilities and property, and of the interest of the schools.
- E. The school board, among other duties, shall perform the following in accordance with applicable law:
  - 1. provide by levy of tax, necessary funds for the conduct of schools, the payment of indebtedness, and all proper expenses of the school district;
  - 2. conduct the business of the schools and pay indebtedness and proper expenses;
  - 3. employ and contract with necessary qualified teachers and discharge the same for cause;
  - 4. provide services to promote the health of its pupils;
  - 5. provide school buildings and erect needed buildings;
  - 6. purchase, sell, and exchange school district property and equipment as deemed necessary by the school board for school purposes;
  - 7. provide for payment of claims against the school district, and prosecute and defend actions by or against the school district, in all proper cases;
  - 8. employ and discharge necessary employees and contract for other services;
  - 9. provide for transportation of pupils to and from school, as governed by statute; and
  - 10. procure insurance against liability of the school district, its officers, and employees.
- F. The school board, at its discretion, may perform the following:



1. provide library facilities, public evening schools, adult and continuing education programs, summer school programs, and intersession classes of flexible school year programs;
2. furnish school lunches for pupils and teachers on such terms as the school board determines;
3. enter into agreements with one or more other independent school districts to provide for agreed upon educational services;
4. lease rooms or buildings for school purposes;
5. authorize the use of school facilities for community purposes that will not interfere with their use for school purposes;
6. authorize cocurricular and extracurricular activities;
7. receive, for the benefit of the school district, bequests, donations, or gifts for any proper purpose; and
8. perform other acts as the school board shall deem to be reasonably necessary or required for the governance of the schools.

**Legal References:** Minn. Stat. § 123A.22 (Cooperative Centers)  
Minn. Stat. § 123B.02 (General Powers)  
Minn. Stat. § 123B.09 (School Board Powers)  
Minn. Stat. § 123B.14 (School District Officers)  
Minn. Stat. § 123B.23 (Liability Insurance)  
Minn. Stat. § 123B.49 (Cocurricular and Extracurricular Activities; Insurance)  
Minn. Stat. § 123B.51 (Schoolhouses and Sites; Access for Noncurricular Purposes)  
Minn. Stat. § 123B.85 (Definition)  
*Jensen v. Indep. Consol. Sch. Dist. No. 85*, 160 Minn. 233, 199 N.W. 911 (1924)

**Cross References:** MSBA/MASA Model Policy 101 (Legal Status of the School District)  
MSBA/MASA Model Policy 202 (School Board Officers)  
MSBA/MASA Model Policy 203 (Operation of the School Board - Governing Rules)  
MSBA/MASA Model Policy 205 (Open Meetings and Closed Meetings)  
MSBA Service Manual, Chapter 1, School District Governance, Powers and Duties



Adopted: 8/16/10

Revised: \_\_\_\_\_

NRHEG School Policy 203  
Orig. 1995  
Rev. 2009

## **203 OPERATION OF THE SCHOOL BOARD – GOVERNING RULES**

### **I. PURPOSE**

The purpose of this policy is to provide governing rules for the conduct of meetings of the school board.

### **II. GENERAL STATEMENT OF POLICY**

An orderly school board meeting allows school board members to participate in discussion and decision of school district issues. Rules of order allow school board members the opportunity to review school-related topics, discuss school business items, and bring matters to conclusion in a timely and consistent manner.

### **III. RULES OF ORDER**

Rules of order for school board meetings shall be as follows:

- A. Minnesota statutes where specified;
- B. Specific rules of order as provided by the school board consistent with Minnesota statutes; and
- C. *Robert's Rules of Order, Revised* (latest edition) where not inconsistent with A. and B., above.

*[Note: The editions of Robert's Rules of Order differ, so specifying the edition used is important.]*

**Legal References:** Minn. Stat. Ch. 13D (Open Meeting Law)  
Minn. Stat. § 123B.09, Subds. 6, 7, and 10 (School Board Matters)  
Minn. Stat. § 123B.14 (Officers)

**Cross References:**



Adopted: 8/16/10

NRHEG Public Schools Policy 209

Orig. 1995

Rev. 2009

Revised: \_\_\_\_\_

## **209 CODE OF ETHICS**

### **I. PURPOSE**

The purpose of this policy is to assist the individual school board member in understanding his or her role as part of a school board and in recognizing the contribution that each member must make to develop an effective and responsible school board.

### **II. GENERAL STATEMENT OF POLICY**

Each school board member shall follow the code of ethics stated in this policy.

#### **A. AS A MEMBER OF THE SCHOOL BOARD, I WILL:**

1. Attend school board meetings.
2. Come to the meetings prepared for discussion of the agenda items.
3. Listen to the opinions and views of others (including, but not limited to, other school board members, administration, staff, students, and community members).
4. Vote my conscience after informed discussion, unless I abstain because a conflict of interest exists.
5. Support the decision of the school board, even if my position concerning the issue was different.
6. Recognize the integrity of my predecessors and associates and appreciate their work.
7. Be primarily motivated by a desire to provide the best possible education for the students of my school district.
8. Inform myself about the proper duties and functions of a school board member.

#### **B. IN PERFORMING THE PROPER FUNCTIONS OF A SCHOOL BOARD MEMBER, I WILL:**

1. Focus on education policy as much as possible.

2. Remember my responsibility is to set policy – not to implement policy.
3. Consider myself a trustee of public education and do my best to protect, conserve, and advance its progress.
4. Recognize that my responsibility, exercised through the actions of the school board as a whole, is to see that the schools are properly run – not to run them myself.
5. Work through the superintendent – not over or around the superintendent.
6. Delegate the implementation of school board decisions to the superintendent.

C. TO MAINTAIN RELATIONS WITH OTHER MEMBERS OF THE SCHOOL BOARD, I WILL:

1. Respect the rights of others to have and express opinions.
2. Recognize that authority rests with the school board in legal session – not with the individual members of the school board except as authorized by law.
3. Make no disparaging remarks, in or out of school board meetings, about other members of the school board or their opinions.
4. Keep an open mind about how I will vote on any proposition until the board has met and fully discussed the issue.
5. Make decisions by voting in school board meetings after all sides of debatable questions have been presented.
6. Insist that committees be appointed to serve only in an advisory capacity to the school board.

D. IN MEETING MY RESPONSIBILITIES TO MY COMMUNITY, I WILL:

1. Attempt to appraise and plan for both the present and future educational needs of the school district and community.
2. Attempt to obtain adequate financial support for the school district's programs.
3. Insist that business transactions of the school district be ethical and open.
4. Strive to uphold my responsibilities and accountability to the taxpayers in my school district.

E. IN WORKING WITH THE SUPERINTENDENT OF SCHOOLS AND STAFF, I WILL:

1. Hold the superintendent responsible for the administration of the school district.
2. Give the superintendent authority commensurate with his or her responsibilities.
3. Assure that the school district will be administered by the best professional personnel available.
4. Consider the recommendation of the superintendent in hiring all employees.
5. Participate in school board action after considering the recommendation of the superintendent and only after the superintendent has furnished adequate information supporting the recommendation.
6. Insist the superintendent keep the school board adequately informed at all times.
7. Offer the superintendent counsel and advice.
8. Recognize the status of the superintendent as the chief executive officer and a non-voting, ex officio member of the school board.
9. Refer all complaints to the proper administrative officer or insist that they be presented in writing to the whole school board for proper referral according to the chain of command.
10. Present any personal criticisms of employees to the superintendent.
11. Provide support for the superintendent and employees of the school district so they may perform their proper functions on a professional level.

F. IN FULFILLING MY LEGAL OBLIGATIONS AS A SCHOOL BOARD MEMBER, I WILL:

1. Comply with all federal, state, and local laws relating to my work as a school board member.
2. Comply with all school district policies as adopted by the school board.
3. Abide by all rules and regulations as promulgated by the Minnesota Department of Education and other state and federal agencies with jurisdiction over school districts.
4. Recognize that school district business may be legally transacted only in an

open meeting of the school board.

5. Avoid conflicts of interest and refrain from using my school board position for personal gain.
6. Take no private action that will compromise the school board or administration.
7. Guard the confidentiality of information that is protected under applicable law.

***Legal References:*** Minn. Stat. § 123B.02, Subd. 1 (School District Powers)  
Minn. Stat. § 123B.09 (School Board Powers)  
Minn. Stat. § 123B.143, Subd. 1 (Superintendent)

***Cross References:*** MSBA Service Manual, Chapter 1, School Board Member Code of Ethics



Adopted: Dec 2008

NRHEG Public Schools Policy 210

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2008

## **210 CONFLICT OF INTEREST – SCHOOL BOARD MEMBERS**

*[Note: The provisions of this policy substantially reflect legal requirements.]*

### **I. PURPOSE**

The purpose of this policy is to observe state statutes regarding conflicts of interest and to engage in school district business activities in a fashion designed to avoid any conflict of interest or the appearance of impropriety.

### **II. GENERAL STATEMENT OF POLICY**

It is the policy of the school board to contract for goods and services in conformance with statutory conflict of interest laws and in a manner that will avoid any conflict of interest or the appearance thereof. Accordingly, the school board will contract under the statutory exception provisions only when it is clearly in the best interest of the school district because of limitations that may exist on goods or services otherwise available to the school district.

### **III. GENERAL PROHIBITIONS AND RECOGNIZED STATUTORY EXCEPTIONS**

- A. A school board member who is authorized to take part in any manner in making any sale, lease, or contract in his or her official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.
- B. In the following circumstances, however, the school board may as an exception, by unanimous vote, contract for goods or services with a school board member of the school district:
  - 1. In the designation of a bank or savings association, in which a school board member is interested, as an authorized depository for school district funds and as a source of borrowing, provided such deposited funds are protected in accordance with Minn. Stat. Ch. 118A. Any school board member having said interest shall disclose that interest and the interest shall be entered upon the minutes of the school board. Disclosure must be made when such bank or savings association is first designated as a depository or source of borrowing, or when such school board member is elected, whichever is later. Disclosure serves as notice of the interest and must only be made once;
  - 2. The designation of an official newspaper, or publication of official matters therein, in which the school board member is interested when it is the only

- newspaper complying with statutory requirements relating to the designation or publication;
3. A contract with a cooperative association of which the school board member is a shareholder or stockholder but not an officer or manager;
  4. A contract for which competitive bids are not required by law. A contract made under this exception will be void unless the following procedures are observed:
    - a. The school board must authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the goods or services could be obtained elsewhere.
    - b. In the case of an emergency when the contract cannot be authorized in advance, payment of the claims must be authorized by a like resolution wherein the facts of the emergency are also stated.
    - c. Before a claim is paid, the interested school board member must file with the clerk of the school board an affidavit stating:
      - (1) The name of the school board member and the office held;
      - (2) An itemization of the goods or services furnished;
      - (3) The contract price;
      - (4) The reasonable value;
      - (5) The interest of the school board member in the contract; and
      - (6) That to the best of the school board member's knowledge and belief, the contract price is as low as, or lower than, the price at which the goods or services could be obtained from other sources.
  5. A school board member may contract with the school district to provide construction materials or services, or both, when the sealed bid process is used. When the contract comes before the school board for consideration, the interested school board member may not vote on the contract. (*Note: This section applies only where the school district has a population of 1,000 or less according to the last federal census.*)
  6. A school board member may rent space in a public facility at a rate

commensurate with that paid by other members of the public.

- C. In the following circumstances, the school board may as an exception, by majority vote at a meeting where all school board members are present, contract for services with a school board member of the school district: A school board member may be newly employed or may continue to be employed by the school district as an employee where there is a reasonable expectation on July 1, or at the time the contract is entered into or extended, that the amount to be earned by that school board member under that contract or employment relationship, will not exceed \$8,000 in that fiscal year. If the school board member does not receive majority approval to be initially employed or to continue in employment at a meeting where all school board members are present, that employment must be immediately terminated and that school board member will have no further rights to employment while serving as a school board member in the school district.
- D. The school board may contract with a class of school district employees, such as teachers or custodians, where the spouse of a school board member is a member of the class of employees contracting with the school board and the employee spouse receives no special monetary or other benefit that is substantially different from the benefits that other members of the class receive under the employment contract. In order for the school board to invoke this exception, it must have a majority of disinterested school board members vote to approve the contract, direct the school board member spouse to abstain from voting to approve the contract, and publicly set out the essential facts of the contract at the meeting where the contract is approved.

#### **IV. LIMITATIONS ON RELATED EMPLOYEES**

- A. The school board can hire or dismiss teachers only at duly called meetings. Where a husband and wife, brother and sister, or two brothers or sisters, constitute a quorum, no contract employing a teacher may be made or authorized except upon the unanimous vote of the full school board.
- B. The school board may not employ any teacher related by blood or marriage to a school board member, within the fourth degree as computed by the civil law, except by a unanimous vote of the full school board.

#### **V. CONFLICTS PRIOR TO TAKING OFFICE**

A school board member with personal financial interest in a sale, lease, or contract with the school district which was entered before the school board member took office and presents an actual or potential conflict of interest, shall immediately notify the school board of such interest. It shall thereafter be the responsibility of the school board member to refrain from participating in any action relating to the sale, lease, or contract. At the time of renewal of any such sale, lease, or contract, the school board may enter into or renew such sale, lease, or contract only if it falls within one of the enumerated exceptions for contracts relating to goods or services provided above and if the procedures provided in this policy are followed.

## **VI. DETERMINATION AS TO WHETHER A CONFLICT OF INTEREST EXISTS**

The determination as to whether a conflict of interest exists is to be made by the school board. Any school board member who has an actual or potential conflict shall notify the school board of such conflict immediately. The school board member shall thereafter cooperate with the school board as necessary for the school board to make its determination.

***Legal References:*** Minn. Stat. § 122A.40, Subd. 3 (Teacher Hiring, Dismissal)  
Minn. Stat. § 123B.195 (Board Member's Right to Employment)  
Minn. Stat. § 471.87 (Public Officers; Interest in Contract; Penalty)  
Minn. Stat. § 471.88, Subds. 2, 3, 4, 5, 12, 13, and 21 (Exceptions)  
Minn. Stat. § 471.89 (Contract, When Void)  
Op. Atty. Gen. 90-A (Aug. 14, 1957)  
Op. Atty. Gen. 90-C-5 (July 30, 1940)  
Op. Atty. Gen. 437-A-4 (March 15, 1935)

***Cross References:*** MSBA/MASA Model Policy 101 (Legal Status of the School Board)  
MSBA/MASA Model Policy 209 (Code of Ethics)  
MSBA Service Manual, Chapter 1, School District Governance, Powers and Duties

# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

May 2020 Vol. 34, No. 1

Editor: Jeff Stratton

### Give board candidates unvarnished truth

Promoting school board service in your community is an important responsibility.

If a citizen approaches you and asks what it takes to serve effectively on a school board, what would you say?

I like the suggestions of former Superintendent Dennis Kelly of Lyons Township (Ill.) High School District 204, because they emphasize commitment and teamwork, two key ingredients to board member effectiveness:

\* Being a board member is like having a major renovation done on your home: It will take twice as long as anticipated, considering time spent in meetings and attending school events, and cost twice as much as planned, considering emotional and physical strain.

\* You have no authority as an individual board member. Your authority and power come as members of a group.

\* If you have a personal agenda, you should reconsider running for the board.

\* You need to make a personal pledge to attend all meetings and read all materials you receive in advance of meetings.

\* While it is helpful to debate all issues before decisions are made, once there is a final decision, you should support it.

\* You will need to keep confidential issues confidential.

\* You should avoid personal attacks, emotional outbursts, and surprising each other and the superintendent at the board table. ■

### Identify tasks for board, superintendent

Discussing board and superintendent roles and responsibilities can prevent the board and superintendent team from intrusion into the other's role. When roles are clearly defined, the board and superintendent relationship remains positive.

The West (Texas) Independent School District does this by stating the five essential tasks for both the board and superintendent.

The five most essential tasks of the board are to:

1. Adopt goals and priorities for the district and monitor success in achieving them.
2. Adopt policies that govern the district and review these policies for effectiveness.
3. Hire a superintendent to manage the district and evaluate the superintendent's effectiveness.
4. Adopt an annual budget for the district and set a tax rate appropriate to fund it.

5. Employ and terminate personnel at the recommendation of the superintendent.

The five most essential tasks of the superintendent are to:

1. Accept responsibility for the planning, operation, supervision, and evaluation of the education programs, services, and facilities of the district.
2. Accept responsibility for the assignment and evaluation of personnel and make recommendations for employment and termination of employees.
3. Prepare and submit a proposed budget to the board.
4. Recommend policies to be adopted by the board and develop administrative procedures to implement those policies.
5. Provide leadership for the attainment of student performance. ■



## 4 agenda problems to avoid

A tightly constructed meeting agenda is one secret to ensuring that board discussion remains on track and meetings are action-oriented. As The Board Doctor, I have reviewed many meeting agendas. Here are four common problems I've identified, along with recommendations to avoid them:

1. Items on the agenda that cause confusion. To make clear what the board is expected to do with an item on the agenda, clearly designate whether the matter is for information only or for board action. Identifying an agenda item with a coding system that states "I" for information or "A" for action solves this problem. The code indicates to board members that for "A" items, they need to be prepared to discuss and act on the issue.

2. Too many agenda items. Be realistic about how

much time you should spend on each item during your meeting. It's always better to table items than to rush through a board discussion and make bad decisions. Consider using time limits on each agenda item if rambling discussion is the board's problem.

3. Low-priority items listed at the top of an agenda. The board, or a board committee, should always handle high-priority items first. Otherwise, you risk having to delay or rush work on pressing business.

4. Items added to the agenda at the last minute. Surprises at board meetings are fair to neither board members nor your superintendent. Your board should make it policy that last-minute agenda additions are not allowed. All board members should indicate what they wish to have included on a meeting agenda prior to the agenda being finalized. ■

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## Board should limit requests for staff work

Hotline call from a Texas board member: "In the past few years, several new board members have been elected who make lots of requests for staff members to perform work for them. The requests for information often are just something one board member needs. Sometimes the staff members will spend several days generating one report for one board member. The requests eat up too much staff time. Do you have any suggestions for how to handle this?"

The Board Doctor's Answer: No board member should treat the district's employees as his personal assistants. To resolve the matter, treat it as a full board issue and not something the board should expect its superintendent to "fix" or handle.

The board should approve a policy that requires full board approval of individual members' requests for staff work. Here's how the policy should work: For a board member to make a request for staff work, the work must take no more than one

hour of staff time and must be related to one of the district's strategic goals. If the request meets these criteria, then the board member must present the request to the full board and get a majority to approve the request.

This approach takes the onus off staff, who likely will be uncomfortable when asked by a board member to perform work. It also removes the superintendent from the equation by making board requests for staff work a board issue, which is where the responsibility should lie for these types of decisions.

The Board Doctor's recommendation: When creating a policy on board requests for information, consider these issues: requests for information during a board meeting, requests for information outside of board meetings, requests for information related to the board meeting agenda, program-specific requests, and how responses from staff will be disseminated to the board. ■

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## Ensure board consensus when goals change

As the board monitors performance on the district's strategic goals, you may find that circumstances have changed, and goals must be modified. When that occurs, it's important that the full board support and approve changes to the strategic plan.

To achieve board consensus on changes to goals, board members should answer the following questions:

### Strategic Plan Criteria

Goal Statement:

1. Does the goal meet the district's mission?
2. Is the goal detailed sufficiently?
3. Does the goal make sense?
4. Is the goal achievable considering district resources?
5. What additional information do you need?
6. Additional comments? ■

# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

January 2020 Vol. 33, No. 9

Editor: Jeff Stratton

### What should you expect of your superintendent?

The following bullet points provide guidance about board and administrator roles and responsibilities from the perspectives of both the board members and the superintendent.

#### What should the superintendent expect of the board?

- To provide counsel, advice, expertise, and insight into the local community.
- To delegate responsibility for the management of the school district and implementation of board policy to the superintendent.
- To refrain from managing administrative functions, like personnel.
- To understand that the staff is responsible to and reports to the superintendent.
- To communicate openly and honestly with the superintendent.
- To support the superintendent.
- To hold the administrator accountable for the school district's performance.
- To provide an annual evaluation of the superintendent's performance.
- To plan strategically for the school district's future.
- To arrange educational opportunities for the full board.

#### What should the board expect of its superintendent?

- Full disclosure — prompt, open, and honest communication of the bad news as well as the good.
- To act as the board's professional advisor.
- To implement board policies.
- To serve as the organization's CEO.
- To recommend appropriate policies for board consideration.
- To interpret the needs of the program and present professional recommendations on all problems and issues considered by the board.
- To develop a budget, and to keep the board informed about the school district's financial status.
- To recruit competent personnel and then develop and supervise them.
- To assist the board in developing effective community information programs.
- To provide the board with professional judgment about the school district's strategic needs, and to participate in the board's strategic planning process.
- To provide the board with an annual self-appraisal. ■



## Balance what's best for all with your personal interests

Some board members believe they were elected for one reason and one reason only: To serve as the community's fiscal conscience.

Too often, that mindset can lead to this kind of thinking: "We could do more if we didn't have so many teachers and administrators on the payroll." That is the wrong way for a board member to

approach board service. Remember: The majority of learning takes place between a child and a teacher. The board member is on the board to make the staff's job easier.

Point: Your entire staff must feel they are part of the team if the district is going to be successful in educating every child. ■

### Get more out of your superintendent's evaluation form

Many superintendent evaluation documents are set up with assessment statements and a rating scale under broad topics such as "Provides leadership to ensure an effective working relationship with the board," or "Protects XYZ school district's financial and physical resources."

One strategy that adds value to the superintendent's evaluation is providing space for board members' written comments under each evaluation section. This "comments" section gives board members an opportunity to offer specific written feedback.

Boards should also consider adding a final section to the superintendent's evaluation form that allows for board responses to a series of open-ended questions.

A Marshal, Mo., board uses the following four questions to conclude its evaluation form:

1. What impressed you the most about the superintendent's performance this year?
2. What specific recommendations do you have for the superintendent to improve performance?
3. What should be the priorities for the superintendent over the next year?
4. Do you have any additional comments regarding the superintendent that have a bearing on her evaluation?

These questions give board members a chance to offer praise to the administrator, suggestions for improvement, and guidance on setting performance goals for the next evaluation period. ■

## Meetings

Use these meeting "norms" to keep your meetings focused and on task:

1. Board of education meetings follow a system of parliamentary procedure.
2. Board meetings stick to the agenda and are businesslike.
3. Board meetings start on time and end on time.
4. Board members arrive on time for meetings.
5. Board meetings last two hours or less.
6. Board members come prepared and participate in discussion at meetings.
7. Board member absences from meetings are minimal.

8. The meeting room is comfortable and conducive to discussion.

9. Committees meet only when there is adequate reason to meet.

10. Discussions are cordial and not dominated by just a few members.

11. Agendas always include positive items, not just problems.

12. Controversial items are dealt with and solutions acceptable to all board members are developed.

13. The board avoids closed session meetings.

14. The board uses its meeting time on matters pertaining to policy, planning, and evaluation, and does not needlessly discuss administrative issues. ■



# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

December 2019 Vol. 33, No. 8

Editor: Jeff Stratton

### Understand the board and superintendent relationship

Understanding the distinctions between the board member's role and that of the superintendent is one of the most necessary tasks of school board service. The line that separates the two roles can easily become fuzzy. When either party loses sight of what it is supposed to do, the work of your school district can suffer.

That's why it is worth taking the time to look closely at exactly what the relationship of board members to the superintendent entails.

The job of a school board is typically defined as "policymaker."

Boards establish policies that direct the district's staff to take a course of action to meet the district's mission. The district's employees function within the parameters of these policies. They implement the board's policies under the direction of the superintendent.

A board observes and evaluates how well the district, led by a superintendent, implements board policies and carries out the district's mission of providing an education to all students.

To better understand where boards set policy, consider this case study involving student fundraiser events:

A board should adopt and ask staff to implement sound policies and procedures to limit liability and political problems the district could face in its student fundraising activities. A board's student fundraising policy should:

- Require preapproval by the superintendent, principal or designee. The ultimate call on whether a fundraiser is appropriate should fall on an administrator. That person can make sure that the i's are dotted and the t's are crossed.

- Address door-to-door sales. In your policy, you may want to consider age limitations. Certainly, younger children shouldn't be going door-to-door without adult supervision. That should be addressed in your policy or administrative regulations.

- Provide proper accounting procedures. Make sure going into a fundraiser that there will be appropriate financial oversight. For example, if it's a class fundraiser, the class advisor may be accountable for the event. But your business manager may need to be involved as well as more often than not the money will be deposited in a district account.

- Consider competition issues. Don't compete with local businesses, or you risk losing local support.

- Prohibit soliciting during instructional time. Instead, consider allowing sales during lunch periods, break times, and between periods.

- Limit the number of events. You don't want to overwhelm parents with too many fundraisers or create a nuisance at parents' place of work with candy and gift wrap sales. ■

## How policy differs from management

Board policies answer the big-picture questions of what the district will do: Educate students. The superintendent implements the board's policies and determines what individual employees will do while carrying out the board's policies using the district's administrative procedures. Board activities and policymaking should affect the entire

school district. An example: Approving the district's annual budget is a board policy decision. That's a board responsibility. Spending within that board-approved budget is the superintendent's job. By examining financial reports and the annual audit, the board monitors the implementation of the budget they set. ■

### Handling public feedback is 'superintendent work'

Here's a great explanation for why the board should completely delegate the handling of stakeholder feedback to the district to the superintendent:

The input the public gives to the schools should be considered "superintendent work" and be properly routed to the superintendent and staff for a response. It is appropriate for the board to ask that it receive the response or a copy of the response, but it is not OK for the board to take over and make decisions in this area. If it does, the board will own the conse-

quences and will be unable or weak in its ability to hold the superintendent responsible for superintendent work.

#### Tip to ensure all voices are heard at the board table

When a long-winded board member takes over your meetings, other trustees are effectively silenced. If this happens on your board, the president should interrupt to say, "Let's see what everyone thinks about this issue. That's what we are all here for." ■

## Is it a policy decision, or is it a management decision?

Assigning responsibilities is an issue that most boards wrestle with at one time or another. How do you identify which member of the board team should manage an issue? Should it be the board or the superintendent?

Here is a method for defining when the board should become involved in an issue and when the superintendent should handle it.

First, determine if the issue is really a board issue or something the superintendent should handle. Boards handle issues that:

- Affect the entire district. (The administrator handles issues that affect individuals.)
- Dictate what the district will do — policy matters. (The superintendent and staff determine how a policy is implemented.)
- Are required by law.

- Are requested by the superintendent.

Second, if it is a policy issue, the board should ask its superintendent to research the issue and give the board her recommendations. Finally, the board makes its decision after weighing the information.

Think about this system in the context of a staff member who is unhappy with being disciplined. Since the issue affects a single person, the board would disqualify it as a board issue. Discipline of staff is the superintendent's responsibility. However, if the discipline of staff appears legally questionable or is obviously not working, then that is a board issue. Handle it by asking the superintendent to report on the policy's effectiveness and make recommendations to improve it. ■



# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

November 2019 Vol. 33, No. 7

Editor: Jeff Stratton

## The board has 4 key responsibilities

While the definition of a board as policy-maker is certainly correct, and makes a very important point, it tells you little about what you actually do as a board member. Within your policy-making role, there are four specific areas of responsibility that you will oversee. They are:

**1. The board hires, supervises, evaluates, and, if necessary, fires the superintendent.** The board's first responsibility, and some say most important one, is to hire a competent administrator to run the district by managing all aspects of its day-to-day affairs. The superintendent works for the board of education, while all other district employees work for the superintendent.

By hiring a superintendent, you are adding a competent education professional to your board team.

Most board members have little inclination, not to mention the time necessary, to manage the day-to-day business of the district. By hiring, and then supporting a professional who keeps things running smoothly, you ensure that the district is well managed, and in a position to fulfill its mission.

**2. The board is responsible for the school district's future.** Because the board delegates the management of the district to the superintendent, it frees itself up for giving the district a strategic direction that ensures its future is a healthy one.

Strategic, long-range planning is a key board responsibility.

Social, regulatory, and economic changes mean

that boards must anticipate and plan for what the future will bring.

Once the board approves a strategic plan for the district, it should monitor the progress the superintendent makes toward meeting the plan's goals and objectives. Short-term operational planning is necessary to achieve your plan, and this is the administrator's responsibility.

**3. The board monitors and evaluates.** A board cannot watch every detail and every activity that takes place in the school district, nor should it. That's called micromanagement and is interfering with the superintendent's responsibility.

But a board must monitor and evaluate bottom-line results.

You should monitor the district's performance in two key areas: financial health and progress toward the board's strategic, long-range educational plan for the district.

**4. The board serves as an advocate.** Because you are an elected official, you are in a unique position to advocate for your school system.

You're not being paid for your service, and you have a higher motive: service to the community at large. This gives you instant credibility, which is the key to any advocate's success.

As an advocate, you might lobby local, state, and federal lawmakers, or communicate your district's goals to constituents and the community.

Hiring a superintendent, planning, monitoring, and advocating are the four primary responsibilities of the board. ■

## Your superintendent has 5 key responsibilities

Your board hired the superintendent to oversee the district's daily operations. There's a lot that goes into this, so here's a more complete listing of the duties that make up the superintendent's job description:

**1. Managing staff and making personnel decisions.** Any decision affecting payroll, hiring, firing, evaluating, or promoting employees is the domain of the superintendent. After all, this is what you hired her to handle.

**2. Making day-to-day operating decisions.** You could say that this is the natural complement to the board member's job. Why? Because the board makes policy and the superintendent carries it out in the hundreds of day-to-day decisions that must be made in the school district. This can include anything from delegating to employees to work on the district's long-range goals to deciding whom to call to fix the heating system in a building to making spending decisions within the budget.

**3. Completing short-term objectives based on the board's long-range plan.** This is where close partnership and teamwork between the board and superintendent bear fruit. The superintendent is responsible for completing yearly objectives based on the district's three- to five-year plan's goals and is evaluated annually on how successfully he accomplishes this task. He is also responsible for giving the board regular progress reports on objectives.

**4. Working with the board to better the district.** Your superintendent is a professional whose expertise and experience are invaluable assets to the board. He will often serve as an in-house expert who analyzes, summarizes, and recommends action on complex issues. Be sure to include the superintendent in all board business.

**5. Developing a budget and spending within it.** The superintendent and his staff will submit a proposed budget to the board for approval. Board members should study it, ask questions if needed, before voting to approve it. ■

## Case studies reinforce board's proper role

A Mississippi board heads off potential role confusion through the use of "cases studies."

During special "problem-solving" sessions, board members focus on cases studies from other districts that show what is and isn't appropriate board behavior.

"The board divides into three groups with each reviewing a different cases study," says a board member. "The groups decide what actions, if any,

the board needs to take in each case. They report back to the board on their decisions."

One case study involved a strained board-superintendent relationship caused by a board member who attempted to override the superintendent on a personnel matter. The group studying the case reported back to the board that the administrator alone has the authority to manage personnel. ■

## Public censure is last step in discipline of a board member

Board members whose behavior is egregious have a lot to lose. They are subject to public censure by the full board (and the attendant embarrassment), using a process that starts with a meeting with the president of the board. Remember:

- Public censure requires a vote by the full board.
- The vote should be made in closed session.

- After the closed session, a statement should be made in public session to censure the offending board member.

*Editor's note: Censure should be the last step in the progressive discipline of a board member. Before censure, the board member should first meet with the board president to discuss how the member's conduct is harming the perception of the school board. ■*

# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

May 2018 Vol. 32, No. 1

Editor: Jeff Stratton

### Board member demands district job for child

A Minnesota superintendent is facing a dicey problem from a "legendary" board member who wants his daughter to have a job in the district after her baking business failed.

The board member feels he is "owed" this for his lengthy service to the district.

As a kicker, the board member is pressuring the district's cafeteria director to purchase the daughter's business equipment for use in the district.

"I have explained to the board member the optics on this will be horrible in our community -- with no luck," said the superintendent.

Carol Weisman ([www.boardbuilders.com](http://www.boardbuilders.com)), a board consultant, minces no words on this matter.

"The answer from the superintendent should be a firm 'no,'" said Weisman. "This is called a conflict of interest."

If there is a position open in the district, the board member's daughter could get an interview without bias, said Weisman.

The board member's duty of loyalty is to the students, not to themselves and their families, said Weisman. "Unless the equipment is needed, budgeted for, and at a reasonable price, the district should not purchase it," she said.

"When you sign up to be a school board member, your reward is in heaven, not for your child," said Weisman. ■

### 7 ideas for giving the board a policy focus

Make these policy-focused ideas and strategies a part of the district's new board member orientation, and you'll be giving trustees an excellent orientation to board service:

1. Pre-service potential board members. In the information the district provides prospective board members, give them materials that highlight board roles and responsibilities.

2. Invite prospective board members to meetings. The superintendent or board president can call and personally invite them to attend a board meeting. They'll see the board's focus is policy, finances, and monitoring results — not managing.

3. Set up a group meeting with board members. Use the meeting to show prospective board members the policy manual, finances, and strategic plan. At this session, point out that the board's

authority comes from its collective action in a legally constituted board meeting.

4. Provide a one-on-one orientation to new members. This way the superintendent and board can reinforce the board's policymaking role.

5. Use workshops and training sessions. Send board members to association events to help them learn what actions are properly the board's and which belong to the superintendent.

6. Share your personal assessment of roles. When you meet with the superintendent and board members, provide your perspective on management's role and the board's policy role, using examples to clarify. This can generate healthy discussion.

7. Give board members a year's worth of minutes. In black and white, board members should see that the board takes a clear policy focus. ■



## **Create a top-notch governing board**

Good boards don't just fall off trees.

A governing board is nurtured, over time, by hard work and commitment. Use these three strategies to build a strong board-administrator relationship and a board that remains focused on governance:

1. Develop trust. Count on your superintendent to run the organization and to tell you about the district's problems and what she is doing to resolve them. On your part, keep lines of communication open and practice "no surprises" at all times.

Ask the superintendent when you have questions on an issue the district faces, and be prepared to tell her about any skill or interest areas

where you might contribute.

2. Eliminate any and all committees related to programs. Program committees are, in most cases, a holdover from a board that micromanages.

Instead of a board committee or advisory committee with a program focus, ask your superintendent for program-related information about how programs are faring and quarterly statistical updates.

3. Be prepared to offer the superintendent help when asked. Offer your assistance when an issue falls into your skill set. This might be legal, financial, or audit expertise, where your administrator requests your insights. ■

### **Use process, code of ethics to correct underperforming board member**

Most boards will, at some time, experience a "problem" board member.

For instance, what do you do about a member who shows up at schools to "evaluate" teachers, or encourages citizens to come to him with their complaints so she can do the school staff's job?

Consider the following procedures to correct the performance of members who get out of line and don't learn from the experience.

#### **Procedures**

Encourage individual board members to express their concerns about another member's performance directly to that member.

If addressing the issue directly with the member does not resolve the concern, then take the matter up with the board president.

The president should discuss the concern with the individual in question on behalf of the board member or shall moderate a discussion between the members.

The president should remind the board member whose behavior is in question about the board's code of ethics and discuss how the questionable behavior does not comply with the code.

If the board member does not believe his or her behavior is in conflict with the code of ethics, an agenda item specifying "evaluation of individual board members' performance" may be listed on the agenda for an upcoming board meeting.

The matter should be discussed by the full board in closed session in an attempt to identify behavior that may be inappropriate and discuss possible solutions. ■

## **Teamwork tip: Spend time together**

Spending time together can build trust and teamwork between the board and superintendent.

An idea: Travel with your superintendent to state school boards association events. The time in the car can help your team bond.

Ask your superintendent for his or her suggestions on which sessions are the best and most educational. Plan to share extra conference handouts with your board teammates.

The trip home is a terrific opportunity to share what you learned. ■



# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

February 2018 Vol. 31, No. 10

Editor: Jeff Stratton

### Avoid too much hands-on driving and the ditch!

School governance consultant and former board member Rick Maloney really nails it on who should be doing what in the board and superintendent relationship. He likens it to steering a vehicle:

"When the board obsesses over the details of operational matters six inches above the surface of the road -- the board of directors is the cause of a poorly functioning steering system," Maloney said.

"Six pairs of hands on the steering wheel will inevitably lead to the ditch on the side of the road."

One pair of hands (the superintendent's, watched and guided by five other pairs of trustee eyes and ears) is the better way to drive the car, steer the ship, run the railroad, and govern the school district, Maloney said.

For information, <https://governance101.com>. Overview/Key Points/Links. ■

### A checklist for effective boardsmanship

To serve effectively, board members must understand specific issues about their school district as well as the difference between board and superintendent responsibilities.

Use the following checklist to spot where you already have a good grasp of board issues. Any "no" answers might suggest a need for board education. ■

	Yes	No
1. Do you understand the responsibilities of a board member, both as defined by your district and by applicable state law?	<input type="checkbox"/>	<input type="checkbox"/>
2. In terms of board actions, what constitutes negligence and malfeasance?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you know your board's quorum for meeting? Please state it:	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you received and read the district's budget?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you know where the district's funding comes from? What are its three top sources of funding? 1. _____ 2. _____ 3. _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you read the board's bylaws and policies, information provided by the superintendent that explains board roles and responsibilities, and information from your state school boards' association?	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you reviewed the district mission statement and strategic plan?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the board have goals for the superintendent? What are they?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you possess special skills that could help the board and district? Have you discussed them with the board president and superintendent?	<input type="checkbox"/>	<input type="checkbox"/>
10. Has your board and superintendent team visited another school board and district?	<input type="checkbox"/>	<input type="checkbox"/>



## Set the policy; then delegate the implementation

From time to time, it's a productive governance activity for the board to be reminded of what it does for a school district. Here is a brief recap of the board's key responsibilities:

- The school board meets the needs of students and the community.

A school board accomplishes this by establishing the mission and creating a vision for the district. The board must also interpret the community's needs to the school district, while communicating the district's vision and successes to the community. The board is also responsible for evaluating the performance of the district. An effective method for evaluating the district is to appraise the performance of the superintendent annually.

- The board establishes policy.

Board policy guides the district's actions. Implementation of board policy is delegated to the superintendent, who oversees school staff as they implement board policy.

- The board plans.

A school board works with its superintendent to identify the district's strategic goals. This is a

matter of the board setting the district's priorities, while considering the community's wishes, available resources, and sound educational practice.

The superintendent develops annual plans to achieve the board's long-term objectives for the district. The superintendent reports regularly on progress toward the district's strategic goals.

- The board monitors finances.

The school board approves the district's annual budget. The budget should reflect the district's current vision. The board will also approve contracts, property purchases, building projects, call elections on bond proposals, and negotiate with employee associations to determine salaries and benefits.

- The board practices teamwork.

Trustees must work cooperatively with their colleagues on the board, and with their superintendent. Teamwork will affect nearly everything the board does: meeting efficiency, conflict management, evaluation of the superintendent and the district, and board development activities. Without a commitment to teamwork, boards accomplish very little. ■

### Survey shows board governance data

*Board & Administrator* conducts its Survey on School Boards each year. In late 2016, B&A subscribers in overwhelming numbers said their school district's board had a code of ethics (87%) and a conflict of interest policy (97%).

Survey respondents also reported that 51% of boards conduct an annual board self-evaluation, while a troubling 36% never evaluate their performance. See charts below. ■

Boards with code of ethics	% of Responses
Yes	87%
No	13%
Total	100%

Boards with conflict of interest policy	% of Responses
Yes	97%
No	3%
Total	100%

Frequency of board self-evaluation	% of Responses
Annually	51%
Every 2-3 years	13%
Never	36%
Total	100%

### A board member's relationship with constituents is sensitive

When a parent hears firsthand that a board member will "take care" of something, it becomes gospel to the parent.

That's why board members should be cautious about making promises on which they cannot deliver. Examples include obtaining new uniforms for the band, improving school lunches,

or firing a coach.

Instead of making promises, take this approach instead: Listen to constituents, thank them for their input, and then tell them how to bring the concern to the proper person in the district to address the matter. Follow up on the matter with your superintendent. ■



# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

November 2016 Vol. 30, No. 7

Editor: Jeff Stratton

## Rumors have no place in the superintendent's evaluation

Washington state school board consultant Bob Hughes would like to change the paradigm on one key issue with superintendent evaluation: communicating board concerns directly to the superintendent when trustees have heard a rumor.

Many successful people who run organizations may have difficult-to-work-for personalities, Hughes said, which can ruffle feathers and lead to sniping and backbiting.

"When I worked at Boeing, I evaluated plenty of professionals," Hughes said. "They all liked to hear

firsthand about any problems with their performance."

The same principle should apply to trustee's negative comments about the superintendent's performance, as well as scuttlebutt that board members may hear about how she interacts with others, Hughes said. "If you can't say what you are hearing in front of other board members, don't say it," he said. "If the superintendent is not there to hear the board members' comments on her performance, they are rumors." ■

## Sharpen up your board meetings

Long meetings are the bane of school boards. They crush enthusiasm, drain energy, and create boredom.

That's why a board and its president need to learn ways to manage discussion and move school business along efficiently. Here are some tips:

1. Keep the discussion flowing. If Jim gets stuck on a topic, the president can say "Thanks, Jim. We know where you stand. I'd like to hear from Cindy now."

2. Be aware of the non-verbal indicators of boredom. When the president notices them, it's time to move the issue under discussion along.

3. If consensus comes early, it's time for the vote.

4. Post-meeting debriefings can prevent future problems. When you have a dominant-personality

board member or even one with great passion for board service, she can monopolize meetings. The president can meet with this individual after the meeting, thank her for her input, and ask for her assistance in keeping meetings to a reasonable length.

5. Consider a timed agenda. Persistent problems in the area of meeting length are an issue that cries out for resolution. By estimating time lengths for each agenda item, the board puts itself on notice that time must be used productively. Ask your superintendent and board president to work out times allotted to each agenda item when they create the agenda. This time-monitoring tool will also give the president the ammunition she needs to end discussion and call for a vote. ■

## **'Wander around in the weeds' and expect some pushback from the superintendent**

When a board member tries to do the staff's job, he is telling the superintendent: "I don't trust you."

This mindset will always damage the working relationship a board member has with the administrator.

This is why it is vital that board members respect the principle of board oversight. In a nutshell, this means the full board is the only entity that can issue directives to the superintendent, not an individual trustee.

If the individual board member doesn't have the votes on an issue, he doesn't have the authority to take an end-run around the full board to the superintendent so that he can get his way.

Trying to interfere in such a way is classic micromanagement. Think of it like this: When you as a board member have agreed not to do something and then you step in and do it anyway after the board and superintendent have discussed roles, you are heading into the weeds. ■

### **Retreat activity: Board team writes a member job description**

Too many board members come to school board service with very little understanding of the requirements of the job. This leads to questions: Do I hire teachers? Do board members give instructional advice to teachers? Do I approve spending decisions?

An effective way to clarify the board's job (and the responsibilities of the individual school board member) is to write a job description for the board.

This way, the board can define, for itself and all future school board members, exactly what the board should be doing.

As a full-board activity in a retreat setting with your superintendent, try to write a school board job description for your own board. Alternatively, the board might ask a committee to come up with a draft job description for board review.

Set down your board's responsibilities under these categories:

- Legal.
- Duties.
- Roles.
- Time commitments (meetings, committee service, district event attendance, continuing education requirements).

The board does itself and the community a great service when it gives thought to these issues, because it not only commits itself to operating effectively but creates a tool that will assist future board members in mastering the position when they are elected for the first time. ■

## **8 rules for avoiding board meeting conflict**

1. Be informed. It's the only way to argue your views professionally.

2. Don't give rumors the same weight as facts and data.

3. Don't try to do the staff's job.

4. Avoid acting defensive. Remain calm.

5. Listen; seek first to understand.

6. Use a recess to calm tempers and soothe frayed nerves.

7. Stay on topic. The agenda has been prepared with board members' time in mind.

8. Mind your manners. Board members who monopolize the meeting can sap the board's energy. The chair should ensure all board member views are heard. ■

# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

October 2016 Vol. 30, No. 6

Editor: Jeff Stratton

## Study the board-superintendent relationship to understand what makes it work

A misunderstanding of the difference between the board member's role and that of the superintendent often lies at the heart of a school district's problems. That's what makes it worth taking the time to study the board-superintendent relationship, and each party's respective role.

It's worth the time to do this, because when the board and superintendent each understand what the other does, the board and superintendent team begin to develop trust.

The superintendent will manage the day-to-day operations of the district. The board is elected to ensure the district meets its mission — giving children an education.

Here are several principles that can help ensure an effective relationship between the board and its superintendent:

1. Treat your superintendent as a vital team member. This means the superintendent should participate in all board discussions and activities.

A board should never meet without its superintendent. These meetings, called closed sessions, destroy any sense of board and administrator trust and teamwork.

2. Stress effective and open communication. Team members must be honest with each other and replace rumors with facts. Open channels of communication must be constant.

Board members should request staff assistance through the superintendent to ensure a coordinated flow of communication.

3. Work at building trust. Trust is a key element in a healthy board and superintendent partnership. To strengthen it, hold an annual retreat for the board and administrator away from your regular meeting room. At this retreat, discuss the board and superintendent's mutual responsibilities. Develop a statement of roles and responsibilities (job descriptions) for the board, individual board members, and the superintendent. ■

## 10 rules for boosting community trust

It's been said often, but bears repeating, that the board and superintendent should practice "no surprises" in the conduct of their relationship. Effective communication forms the basis of a productive relationship between the two parties.

There is another area where the board should emphasize effective communication in order to lead the district effectively: Communication with the district's stakeholders is how the board creates trust and practices accountability. Here are 10 rules for sound communication with the board's constituents:

1. Be honest.
2. Listen.
3. Seek first to understand.
4. Never make promises.
5. Be accountable.
6. Practice respect in your interactions.
7. Create a clear vision for the district.
8. Welcome discussion with the community.
9. Involve your stakeholders in the schools.
10. Support the district's staff in your public comments. ■



# Board & Administrator

FOR SCHOOL BOARD MEMBERS

August 2016 Vol. 30, No. 4

Editor: Jeff Stratton

## The board and superintendent should define board and staff roles

Board members often come to board service with little experience in understanding the basic nuts and bolts of how school districts work.

This is because school board service is much different than the types of work experiences that most board members have encountered. They come from the business world, are small business owners, or are public-spirited individuals who want to use their volunteer time to help children.

When it comes to the board member role, these past work experiences can lead to confusion about how a board member's responsibilities differ from those of an employee. They can create questions in a board member's mind about who does what.

This can affect your relationship with the superintendent, who has been trained to manage the day-to-day workings of the school district, from buses and beans, to curriculum and personnel.

It can be useful to review the following chart for a simple explanation of who does what in the district:

- Who teaches students? Classroom teachers.
- Who supervises teachers? Building principals.
- Who hires, fires, and manages principals?

Your superintendent.

- Who hires, fires, and manages the superintendent? The school board.

There are other effective ways to pin down the specifics that exist in the difference between the board's role and the staff's.

An exercise that can help teach a board the difference between board and staff roles can be a useful learning tool, if the board and superintendent complete the tool together, discuss the

results, and come to agreement on how questions of who does what will work in their district. I've provided a brief exercise below.

In a group setting, board members can answer the following questions on their own and then discuss the results as a group with the superintendent to reach consensus.

Board members should select an answer for each question by indicating Y for yes and N for no.

Since lack of clarity about roles is one of the major causes of conflict and disagreement between boards and superintendents, it is important to discuss roles as a team and establish the roles and responsibilities for your district.

### Board Role Review

- |  |   |   |
|--|---|---|
| 1. The board should interview teacher candidates.                                    | Y | N |
| 2. Regular review of the policy manual is a board responsibility.                    | Y | N |
| 3. The superintendent's assistant should take minutes at board meetings.             | Y | N |
| 4. The board should approve staff requests for professional development training.    | Y | N |
| 5. The board should set a policy on how it wants district telephones to be answered. | Y | N |
| 6. Board members should visit classrooms to offer teachers instructional advice.     | Y | N |
| 7. The superintendent is the board's only employee.                                  | Y | N |

# Board & Administrator

FOR SUPERINTENDENTS ONLY

March 2016 Vol. 29, No. 11

Editor: Jeff Stratton

## Developing board-superintendent operating principles

*By Michael Dunn, Ed.D., and Randy Russell, Ph.D.*

Successful organizations are the result of effective and dynamic leadership. To assure a quality operation, leaders must agree on and commit to basic ways of operating together.

Operating principles for the board and superintendent define the beliefs, values, and methods of working together. Once implemented, the manner in which the board and superintendent conduct their relationship and the district's business becomes a model throughout the district, and serves for staff and our "customers" as an example of how problems are solved.

Most educators who become superintendents have never, prior to assuming the position, reported to more than one person — let alone a school board of five members or, in some cases, even more. The challenge is for school boards and superintendents to work as a cohesive team.

In order to develop a positive, proactive, unified team approach, both the school board and superintendent must know, understand, and respect their respective roles. This role clarification can become clear

through board work sessions, individual one-on-one sessions with each board member, and through the development of board-superintendent operating principles. The time together developing such principles — and the ensuing discussion — creates an open, honest dialogue that builds trust and confidence between the superintendent and the school board and lays the foundation for working together.

The Freeman, Wash., School District, working collaboratively with Superintendent Dr. Michael Dunn, NorthEast Washington Educational Service District 101, determined and subsequently adopted Board-Superintendent Operating Principles.

The following operating principles outline the philosophy of cooperative behavior that has been developed and mutually agreed upon by the board and the superintendent in the Freeman School District. As members of the leadership team, we are committed to upholding these principles.

### Leadership Team Roles

Freeman School District Board	Freeman School District Superintendent
<b>GOVERNS</b>	<b>LEADS</b>
<ul style="list-style-type: none"> <li>Reviews and Suggests What</li> <li>Requests Information</li> <li>Considers Issues</li> <li>Creates, Reviews, and Adopts Policy</li> <li>Approves and Reviews Plans</li> <li>Monitors Progress</li> </ul>	<ul style="list-style-type: none"> <li>Decides How</li> <li>Seeks and Provides Information</li> <li>Provides Recommendations</li> <li>Recommends and Carries Out Policy</li> <li>Implements Vision</li> <li>Reports Progress</li> <li>Supervises Hiring Process and Practices</li> <li>Supervises and Evaluates Personnel</li> </ul>
<ul style="list-style-type: none"> <li>Contracts with Personnel</li> <li>Approves Evaluation Criteria and Procedures</li> <li>Approves and Reviews Budget</li> <li>Represents Public Interest</li> </ul>	<ul style="list-style-type: none"> <li>Formulates and Implements Budget</li> <li>Acts in Public Interest</li> </ul>

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# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

February 2016 Vol. 29, No. 10

Editor: Jeff Stratton

### Place the interests of students far above your own needs

Texas school board consultant Paul Vranish said board members who wish for a high-caliber district should place the needs of the kids first — certainly before their own agendas.

"Those trustees who see the board as a stepping-stone to higher political office, see their role as a means to secure employment for family and friends, ran for the board to 'get' an employee, or have a self-centered ego so large that they are willing to harm the district to be 'right,' deserve a severe drubbing at the ballot box," Vranish said.

The board member who approaches board service with a desire to serve appropriately should always consider his role in the district versus the superintendent's, Vranish said, because that relationship can be a lighting rod for problems if not understood properly.

"The superintendent's role is similar to that of a travel agent for a group — the board," Vranish said. "Using careful questioning and listening skills, the superintendent must ascertain where the board wishes to go."

After determining the board's vision and the direction they want to lead the district, it then becomes the superintendent's duty to get that board to the desired destination in a manner that provides the best value for the public funds spent, he said.

Like any travel agent, the superintendent can recommend alternative destinations based on her

expertise in the field (knowledge of the area, trips on sale, etc.), Vranish said.

"The superintendent is duty-bound to communicate these matters to the board, even to risk board members' anger when giving them information which may flow against their wishes," he said.

However, when it comes down to the final decision, the direction of the school district lies with the board. The superintendent must comply, or find another district where the values, direction, and philosophies are more in synch with her own, Vranish said.

Board members should defer to their "travel agent's" expertise on *how* to get to the desired destination. The board should communicate essential information regarding methodology ("I can't sail, because I get seasick"), Vranish said, so that the superintendent/travel agent can make the best possible recommendation.

"However, as a rule, the superintendent's operational expertise for school district functioning will surpass that of the trustees — as a group, or individually," he said. While it is often true that an individual trustee may have specific topical knowledge that is more robust than a superintendent, it is a rare case where the global knowledge of school operation is greater within the board than the district's administration," Vranish said.

For information, [paul@vranish.ws](mailto:paul@vranish.ws). ■

### Board members represent the entire community

It's common for board members to come to board service with a passion for a special interest or single issue: Your neighborhood or special needs students, for example.

As a board member, you need to recognize the fact that you represent all interests in the district

— that's what is best for the public.

Work hard on your interests, but remember that there are other compelling interests in the district as well.

The best way to keep this in mind is simple: Focus on children and serving their best interests. ■

# Board & Administrator

FOR SUPERINTENDENTS ONLY

November 2015 Vol. 29, No. 7

Editor: Jeff Stratton

## School board member: Be a general, not a sergeant!

*Editor's note: In the following article, Paul Vranish provides the superintendent and school board members with practical ways to think about board service and use these concepts to better understand each party's roles.*

**By Paul Vranish**

There have been many articles written, even entire books, about the proper oversight role of a school board trustee relative to the district's operations. The importance of the correct balance of trustee involvement cannot be overstated; the district's greatness, or failure, is directly linked to the performance of its board.

When discussing the proper relationship between the board and superintendent, it is important to realize that the primary role of the superintendent is to operate the district as per the overall goals and philosophies of the oversight board.

Caution: Those trustees who see the board as a stepping-stone to higher political office, see their role as a means to secure employment for family and friends, ran for the board to "get" an employ-

ee, or have a self-centered ego so large that they are willing to harm the district to be "right," need read no further. The only help for such individuals is a severe drubbing at the ballot box.

Many models already exist that illustrate the separation of appropriate duties vis-à-vis a school board and its superintendent.

Here is a different way of looking at the superintendent's job: The superintendent's role is one similar to that of a travel agent for a group (the board). Using careful questioning and listening skills, the superintendent must ascertain where the board wishes to go (vision, direction of the school district). It then becomes the superintendent's duty to get that board to the desired destination in a manner that provides the best value for the public funds spent.

Like any travel agent, the superintendent can recommend alternative destinations; based on his expertise in the field. The superintendent is duty-bound to communicate these matters to the board; to risk their anger when giving them information that may flow against their wishes. But when it comes down to the final decision, the direction of the school district (the destination) lies with the board. The superintendent must comply, or find another district where the values, direction, and philosophies are more in synch with his own.

Trustees should defer to their "travel agent's" expertise on *how* to get to the desired destination. Granted, trustees should communicate essential information regarding methodology, i.e. "I can't

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sail, because I get seasick.” However, as a rule, the superintendent’s operational expertise for school district functioning will surpass that of the trustees — as a group, or individually. While it is often true that an individual trustee may have specific topical knowledge that is more robust than a superintendent, it is a rare case where the global knowledge of school operation is greater within the board than the district’s administration.

Why do individual trustees, sometimes whole boards, get involved in the day-to-day operations of the district? Why is micro-management a problem with some boards?

Most people who have been elected to a school board have never held a position on a corporate board; they have absolutely no experience in strategic and/or philosophical management. However, they either work under someone, or hold a mid-management position themselves, and possess a lot of experience in task management. It is quite natural that such people will gravitate to a mode where their life experience provides a foundation for their actions. In a role similar to a sergeant, they are more comfortable because they have experience and know what to do.

Even a small school district is a multi-million-dollar business. Like similar business, the district functions best when its corporate board provides guidance, values, philosophies, and direction at the working level of a general, not a sergeant.

Consider the following two examples in contrast; one military, one from school district operations.

### **Military**

A sergeant will gather her troops before going out on patrol and disseminate instructions similar to the following orders: “People, we will be on patrol for two days, with a high possibility of enemy contact. Each of you should carry eight clips of ammunition, two frag grenades, one smoke grenade, and a two-day supply of water and rations. Are there any questions?”

While these orders are critical for a unit on patrol, a general would never get involved in such “down the ladder” information. A general would focus his efforts in a more global mode; deciding what military units (and types of units) to deploy in which situations, ensuring that supply chains are established and maintained, and seeking overfly privileges from foreign countries. The BIG stuff!

### **School District**

A trustee leans on the fence at a football game and converses with a friend. They both agree that the football coach should be fired. After this conversation, the trustee pursues an agenda to fire the coach; nagging and lobbying the superintendent and the remainder of the board. This school board has a small-thinker here.

Another trustee is also concerned about the football program, but this trustee thinks like a general. At the next board meeting, during an appropriate time, she poses the following questions to her colleagues and the superintendent:

- What do we, as a district, expect from our football program — even our entire athletic program?
- If we had the program to the level we wish, what would that look like?
- By what parameters is the coach evaluated?
- How are all coaches, and their programs evaluated? And who conducts these evaluations?
- How much of our resources, within the budget, are we — as a board — willing to commit to get us to the desired state for our athletic program?
- How long, reasonably, would it take to achieve this desired state?

This trustee is thinking like a general and a very effective trustee. The students and the taxpayers are the ultimate winners when this type of high-level thinking is prevalent on a school board.

If a trustee finds herself wanting to be on the campus checking on things, giving directives to school employees, and needing to directly command the operations, then she is a sergeant. The best way to proceed is to get off the board and into a school position. A great starting point would be an assistant principal or a maintenance supervisor.

Until a trustee is ready to be a strategic thinker, a “general,” he will reduce the effectiveness of the board, harm the students’ school experience, and live in a state of perpetual, personal frustration.

I believe every school trustee has a right to be happy. But it is important that each trustee place herself in the appropriate position that matches with the trustee’s preferred supervisory mode. A good trustee thinks like a general, not a sergeant.

Vranish is a retired superintendent and school board trainer. Visit <http://vranish.us/html>. ■



# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

November 2015 Vol. 29, No. 7

Editor: Jeff Stratton

### What is the board's response to a candidate with a vendetta?

Too often, candidates run for the school board with a single-issue: firing a teacher, a coach, or in some cases, the superintendent.

When the board has a member who sees this as his one job on the board, the body needs to be prepared to ask a pointed question: What will be your next act if you are successful in your desire to oust an individual from the district?

The board should stress to its members that the position of board member requires the board to represent the best interests of all the district's stakeholders.

The key here is for the board to work at professionalism in its approach to school governance. This is an expectation that the community has of its board: Professional behavior, with no distracting sideshows at board meetings, no members using

their board seat to pursue a vendetta, and no member seeking personal gain from board service.

To achieve this:

- Come to meetings prepared.
- Contact your superintendent before the meeting with any questions you might have about the agenda.
  - Make a commitment to keep board meetings orderly and business-focused.
  - Never become verbally abusive of another board member, school staff or the superintendent.
  - Maintain confidentiality.
  - Communicate. Practice "no surprises."
  - Keep your focus on students.
  - Respect the chain of command.
  - Review and sign a conflict-of-interest statement annually as a reminder to the board. ■

### Don't let personnel issues create confusion

Staff problems often create conflict between the board and superintendent. To clear up any confusion surrounding the relationship between the board and employees, keep these thoughts in mind:

1. Who manages individual staff members? The superintendent hires, disciplines, fires, and evaluates employees. She is the person ultimately responsible for actions in these areas. The board manages only one employee: the superintendent. The board gives the superintendent a contract to manage the district.

2. What problems can occur when board members give direction to employees? Giving orders to school staff is a sure-fire way to disrupt the chain of command and compromise the superintendent's authority. To compound the problems, interfering with staff sends them the wrong message: "I can

turn to a board member anytime I have a problem."

When this occurs, it wastes board time and diverts the board from its proper role. To many board members and potential board members, this is a colossal waste of time.

3. What are some productive ways for board members and staff to interact?

It's always informative and engaging when teachers and other staff address the board about their work, and give examples of their accomplishments with students, for example. The board should also recognize employees for their achievements.

Finally, when the board and superintendent engage in strategic planning for the district, it is a good idea to gather thoughts from employees about what they consider the top challenges the schools face going forward. ■

# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

October 2015 Vol. 29, No. 6

Editor: Jeff Stratton

### Tackle your biggest challenge as a board member

What's the biggest challenge in serving on a school board? You have to be aware of what is going on in the school district without being involved in the actual operations.

You don't teach or select bus routes, for instance. The board member's job is to set policies and let the superintendent and her staff members carry out those policies. It's tough sometimes not to step in, but remember, you hire the superintendent to manage the district.

Think for a moment about your responsibility as

a board member: Your decisions can dramatically impact the lives of many people — students, staff, and the entire community.

That's why when you are voting, your responsibility is to the entire school district. You can't serve effectively if you are beholden to a special interest group, consider only the interests of your own neighborhood, or spend time worrying about students' playing time on the district's sports teams.

So always base your vote on what is best for students, the school district, and the community. ■

### Can I use school board service for my personal advantage?

In short, no.

It's unethical to use your position on the board to advance your interests.

As an example, let's say the board approves a new elementary school building project. The construction company you work for submits a bid for the project. What is your responsibility in this

situation? You should abstain from voting on the purchase bid.

To do otherwise is a clear conflict of interest because you could benefit financially from your relationship to the board.

This would reflect poorly not only on yourself, but on the district's image in the community. ■

### Handle that unpopular board decision

Making a controversial board decision is difficult. You will likely generate unflattering media coverage and face some wrath from irate constituents. Sometimes, that is what comes with the territory.

The key thing to remember is the board should not automatically cave if it has made an educationally sound decision.

You can stand by your position as a board team if:

\* You did your homework. If the board did its research before the vote, the board is likely to remain unified in the

face of public pressure.

\* You based the decision on facts. If the board votes based on facts, it will likely withstand the emotions of a hot and bothered public.

\* You follow through. Groups in town may be slighted by a board decision. That doesn't mean the board should reverse itself. In the long run, voters will respect a board that listens and then does what it believes best for students — even when it means making the occasional unpopular decision. ■

# Board & Administrator

## FOR SCHOOL BOARD MEMBERS

September 2015 Vol. 29, No. 5

Editor: Jeff Stratton

### Board service requires professionalism

Boards that are not professional often find some reason to fault their superintendent. It may be just one or two members who act unprofessionally, so it falls to the full board to rein them in.

To build and maintain professionalism, work to ensure:

- \* Board members realize they have no individual power and can only make decisions as a member of the full board when it votes.

- \* Board members realize the superintendent takes direction from the full board and doesn't take orders from individual members.

- \* Board members realize they are policymakers, but do not implement policy.

- \* Board members refer the problems of constituents to the lowest possible level of administration.

- \* Board members realize that ethical dealings

are vital to their relationship with board colleagues, the superintendent, and the community.

- \* Board members practice open, honest communication with their superintendent.

- \* Board members maintain confidentiality, especially of the closed session and on all personnel matters.

- \* Board members don't pursue hidden agendas.

There are many ways to formally commit to professional behavior as a board, such as:

- \* Through the policies the board approves.

- \* By developing a set of operating principles at a board and superintendent retreat.

- \* Through attendance at your state school boards association meetings.

- \* By developing a set of rules to govern the board and superintendent relationship. ■

### Board's leadership sets tone on 'who does what'

The board sets policy, and the superintendent implements policy. That's the board and superintendent relationship in its simplest terms.

While this may be perfectly simple in theory, in practice, on issues such as hiring and leave for staff, among others, it is not always so clear-cut.

That's why when a dilemma about "who does what" arises, the leaders on the board team (generally the board's officers) should issue polite reminders to the full board. When they do this, their message should be, "The full board, through its votes, makes decisions on the issues that affect the entire district, while

the superintendent handles matters that affect individuals."

Another way for a board to manage this issue is for the board to agree on a "watchdog" who will remind fellow members when the board is crossing the line into management with its requests or actions. Some superintendents are upfront about saying this; others are not.

When a board member strays from this concept, do not single her out. Instead, politely remind the full board when an individual board member enters into the weeds on an issue. That way, no board member feels "targeted." Just say, "I think this is an area that belongs to the superintendent." ■



### Board-superintendent responsibility exercise

Please indicate whether you are:

- \_\_\_\_\_ In your first term as a board member.
- \_\_\_\_\_ Have served on the board for four or more years.

1. The school board is/should be totally responsible
2. The school board is/should be primarily responsible
3. The school board and the superintendent are/should be equally responsible.
4. The superintendent is/should be primarily responsible.
5. The superintendent is/should be totally responsible.

**How it is**

1    2    3    4    5

**How it should be**

1    2    3    4    5

**Issue**

1. Accepting or rejecting a request from a specific nonschool group to use school facilities.
2. Deciding how to invest \$100,000.
3. Hiring lead counsel.
4. Preparing a line-item budget.
5. Direct discussion with teacher education representatives about salary, work load, and benefits to be included in the next budget.
6. Providing orientation for new school board members.
7. Talking to the press after a weapons incident at the high school.
8. Deciding which courses to cut from the curriculum to meet budget demands.
9. Hiring an assistant superintendent.
10. Selecting textbooks for use in the school system.
11. Authorizing specific expenditures from allocated funds.
12. Appointing people to serve on school advisory committees.
13. Determining what items will be included in the school board agenda.
14. Deciding which school building(s) to close due to declining enrollment.
15. Deciding the grade organization of the system's schools.
16. Transferring a principal from one school to another in the system.
17. Awarding contracts to vendors.
18. Deciding which extracurricular activities the schools will offer.
19. Hiring a high school principal.
20. Deciding individual bus routes.
21. Promoting a teacher to an assistant principal position.
22. Transferring a student from one school to another in the system.
23. Firing the school system's budget officer.
24. Deciding which staff members report directly to the school board.
25. Hiring a basketball coach.
26. Setting school attendance boundaries.
27. Deciding where to deposit school system funds.
28. Approving report cards and grading systems.
29. Writing a mission statement for the school system.
30. Establishing criteria for evaluation of the superintendent.

Source: Dr. Cynthia Elsberry, superintendent, Horry County Public Schools, Conway, South Carolina.  
 Reprinted with permission. ■

# Board & Administrator

FOR SUPERINTENDENTS ONLY

March 2015 Vol. 28, No. 11

Editor: Jeff Stratton

## Dialogue, facilitator key to role clarification between board, superintendent

When the superintendent and her board engage in work designed to clarify roles, they should concentrate on open and honest communication to get the most out of the exercise.

Cynthia Elsberry, superintendent at Horry County Public Schools in Conway, S.C., and her board use a facilitated roles-and-responsibilities exercise that is particularly helpful because of the conversations it generates among board members and the superintendent.

"The instrument is very powerful because board members identify the roles they are supposed to play," Elsberry said. "It really generates some good conversation between board members and the superintendent."

For example, one question asks board members whose role it is to hire an assistant superintendent.

"The facilitator helps the board look at that item and discuss why or why not that is their role," Elsberry said. Find the exercise on page 5.

Elsberry also finds this exercise helpful because it starts board members thinking and asking questions about how they perform their governance work.

"When the board members start reflecting on how they should be operating, that generates a lot of good discussion," she said.

This kind of roles exercise works because it asks the board to take a policy focus. "The value of these exercises is they refocus the board on the policies that govern the district," she said.

Often, it is easy for board members to fall into the trap of spending time on the day-to-day issues of the district, Elsberry said. For instance, a board member may be put on the spot by a constituent who wants to know why something happened "They get dragged down into the mire of the day to day," she said.

A roles exercise reminds board members of their roles as policy makers and to watch the big picture, Elsberry said. "It's important so that they understand their role," she said.

Elsberry is at the table during the exercise and ensuing discussion, but brings in an outside facilitator for a retreat to lead the activity. "That's critical," she said. "If I facilitate the exercise, it would appear as if I was telling the board what it should and should not do. With an outsider, the exercise is more reflective."

The facilitator is important to the success of any roles-and-responsibilities exercise, she said. "I don't ever want to be in the position of telling the board what its job is," Elsberry said.

The superintendent and her staff take a

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backseat role at the retreat when the board works on a roles-and-responsibilities exercise, Elsberry said. She has been more involved in past retreats and would help schedule and plan everything and stay involved during the retreat,

but then it became the superintendent and staff's retreat rather than the board's, she said.

"That's not a good place to be because it appears as if the superintendent is trying to take over the board's role," Elsberry said. ■

### **Orientation, education save superintendent from bad apple**

School board consultant Bob Hughes has 30 years' experience as a school board member in Washington. In other words, he's seen some things when it comes to boards. Here's one example:

"A teacher in a Washington district was fired from her teaching position, ran for the board, was elected, and spent the first year of board service trying to fire the superintendent," Hughes said.

The board member would call for an executive session at every meeting, Hughes said. Board meetings would last until midnight, and she would rail at the board trying to convince them to fire the superintendent. "This went on for a year and a half," Hughes said.

The former teacher's friends still on staff would feed the new board member information about how they were being "mistreated," Hughes said. "Each executive session,

she would bring up some issue, and in some cases, administrators were moved or demoted," he said.

The board member was never successful in removing the superintendent, but she still did some damage. To make matters worse, after each board meeting, she penned letters to the editor of the local paper giving voice to her displeasure.

"She did this for months," Hughes said.

This story gives a good example to the superintendent about the importance of orienting, educating, and communicating with board members. It may be what saves your job.

Consider it a preventive in the event one bad apple joins your board. If you have managed your board relationships effectively, one unprofessional board member is not likely to sway the other members of the board. ■

### **A plan for board member orientation**

After they've been elected to serve on the board, it's important to orient new members to board service. Orientation of new members is a responsibility that can be shared; the board's president, the superintendent, and board members should all participate. The following is an example of a board member orientation plan.

Orientation of: \_\_\_\_\_

Date of orientation: \_\_\_\_\_

Orientation completed by: [person and date]

**Introduce the board member to the school district:**

- Who we serve.
- Our mission.
- Our community.

**Explain board basics:**

- Meeting attendance and preparation.
- Committee assignment.
- Board role.
- Relationship to staff.
- Other.

**Tour:**

- Administrative offices and board room.
- Teachers, curriculum, students.

**Introduce board member to:**

- Board president.
- Chair of committee board member is assigned to.
- Other board members.

- Staff.
- Others.

**Collect data from board member:**

- Address.
- Family information.
- Phone number, email.
- Best time to contact.
- Other.

**Provide to board member:**

- Letter of welcome from superintendent.
- Mission statement, vision.
- Bylaws.
- Board policies.
- Meeting minutes for past year.
- Annual report.
- Auditor's report (most recent).
- Current budget, other financial reports.
- Strategic plan.
- Administrator's goal's for the year.
- List of board members with contact information.
- List of board officers.
- Job descriptions of committees, with committee chairpersons.
- Schedule of meetings for year.
- Board portal on district website.
- Other. ■

## Role of the Superintendent

### From the MSBA Website

School boards employ a superintendent to lead and manage the school district. The superintendent is an ex officio, nonvoting member of the school board and the chief executive officer of the school system. The superintendent's duties and responsibilities are derived largely from three sources: in statute, his/her employment contract, and his/her job description.

Superintendents are responsible for the management of the schools, the administration of all school board policies, and are directly accountable to the school board. The superintendent must annually evaluate each principal assigned responsibility for supervising a school building in the district. Also, the superintendent may delegate responsibilities to other school district personnel, but shall continue to be accountable for actions taken under such delegation.

**STATUTORY AUTHORITY:** Access M.S. 123B.143, the statute regulating the school board's employment of a superintendent.

**LICENSE:** Minnesota law requires superintendents who work in Minnesota to hold a superintendent's license from the state of Minnesota.

### **Resources:**

- Board & Administrator for School Board Members Monthly Publication
- Minnesota School Board Association (MSBA) Website—Board Work
- The School Board Member's Manual: The Essential Guide for Effective Service (3<sup>rd</sup> Edition)
- NRHEG School Board Policy Manual 300 Series (301, 302)



Adopted: 6/18/12

NRHEG Public Schools Policy 301

Orig. 1995

Revised: 6/18/12

Rev. 2011

## **301 SCHOOL DISTRICT ADMINISTRATION**

### **I. PURPOSE**

The purpose of this policy is to clarify the role of the school district administration and its relationship with the school board.

### **II. GENERAL STATEMENT OF POLICY**

- A. Effective administration and sound management practices are essential to realizing educational excellence. It is the responsibility of the school district administration to develop a school environment that recognizes the dignity of each student and employee, and the right of each student to access educational programs and services.
- B. The school board expects all activities related to the operation of the school district to be administered in a well-planned manner, conducted in an orderly fashion, and to be consistent with the policies of the school board.
- C. The school board shall seek specific recommendations, background information and professional advice from the school district administration, and will hold the administration accountable for sound management of the schools.
- D. Although the school board holds the superintendent ultimately responsible for administration of the school district and annual evaluation of each principal, the school board also recognizes the direct responsibility of principals for educational results and effective administration, supervisory, and instructional leadership at the school building level.
- E. The school board and school administration shall work together to share information and decisions that best serve the needs of school district students within financial and facility constraints that may exist.

**Legal References:** Minn. Stat. § 123B.143 (Superintendent)  
Minn. Stat. § 123B.147 (Principals)

**Cross References:** MSBA Service Manual, Chapter 3, Superintendent of Schools





Adopted: 6/18/12

NRHEG Public Schools Policy 302

Orig. 1995

Revised: 6/18/12

Rev. 2011

## **302 SUPERINTENDENT**

### **I. PURPOSE**

The purpose of this policy is to recognize the importance of the role of the superintendent and the overall responsibility of that position within the school district.

### **II. GENERAL STATEMENT OF POLICY**

The school board shall employ a superintendent who shall serve as an ex officio, nonvoting member of the school board and as chief executive officer of the school system.

### **III. GENERAL RESPONSIBILITIES**

- A. The superintendent is responsible for the management of the schools, the administration of all school district policies, and is directly accountable to the school board.
- B. The superintendent shall annually evaluate each principal assigned responsibility for supervising a school building in the district.
- C. The superintendent may delegate responsibilities to other school district personnel, but shall continue to be accountable for actions taken under such delegation.
- D. Where responsibilities are not specifically prescribed, nor school board policy applicable, the superintendent shall use personal and professional judgment, subject to review by the school board.

**Legal References:** Minn. Stat. § 123B.143 (Superintendent)

**Cross References:** MSBA/MASA Model Policy 202 (School Board Officers)  
MSBA/MASA Model Policy 208 (Development, Adoption, and Implementation of Policies)  
MSBA/MASA Model Policy 214 (Out-of-State Travel by School Board Members)  
MSBA/MASA Model Policy 301 (School District Administration)  
MSBA/MASA Model Policy 303 (Superintendent Selection)  
MSBA/MASA Model Policy 304 (Superintendent Contract, Duties, and Evaluation)  
MSBA/MASA Model Policy 305 (Policy Implementation)  
MSBA/MASA Model Policy 306 (Administrator Code of Ethics)

MSBA/MASA Model Policy 412 (Expense Reimbursement)  
MSBA/MASA Model Policy 510 (School Activities)  
MSBA/MASA Model Policy 511 (Student Fundraising)  
MSBA/MASA Model Policy 513 (Student Promotion, Retention, and  
Program Design)  
MSBA/MASA Model Policy 602 (Organization of School Calendar and  
School Day)  
MSBA/MASA Model Policy 605 (Alternative Programs)  
MSBA/MASA Model Policy 701 (Establishment and Adoption of School  
District Budget)  
MSBA/MASA Model Policy 704 (Development and Maintenance of an  
Inventory of Fixed Assets and a Fixed Asset Accounting System)  
MSBA/MASA Model Policy 802 (Disposition of Obsolete Equipment and  
Material)  
MSBA/MASA Model Policy 903 (Visitors to School District Buildings and  
Sites)  
MSBA/MASA Model Policy 905 (Advertising)  
MSBA/MASA Model Policy 906 (Community Notification of Predatory  
Offenders)  
MSBA/MASA Model Policy 907 (Rewards)  
MSBA Service Manual, Chapter 3, Superintendent of Schools

## **SAMPLE SUPERINTENDENT JOB DESCRIPTION**

### **General Position Description**

The Superintendent is the chief executive officer of the School District, is the professional advisor to the School Board, and is directly accountable to the School Board.

The Superintendent is responsible for guiding and directing all operations and activities of the School District and for informing the School Board of all the needs related to the current and future operations of the School District. The Superintendent shall recommend policies to the School Board and, when adopted by the School Board, shall be responsible for implementing, interpreting, and executing those policies.

### **Specific Duties**

The Superintendent shall do the following:

- Provide leadership for the School District's educational programs, staff-development programs, and curriculum development to provide the best possible learning environment for all the School District's students;
- Inform and advise the School Board about programs, practices, and problems of the School District and keep the School Board informed of the activities operating under the School Board's authority;
- Explain the educational needs of the School District to the School Board, recommending necessary new and/or revised policies and staffing changes for School Board action;
- Act as liaison between the community and the School District and respond to concerns of parents, students, citizens, and staff in order to increase understanding of policies and practices and to keep them informed of and involved with School District activities;
- Oversee all financial operations of the School District and prepare, present, and recommend budgets to the School Board;
- Interpret employee proposals to the School Board, recommend adjustments to employee policies and salary structures as appropriate, and be responsible for the management of all employee contracts and policies;
- Develop and maintain a comprehensive strategic planning process, which includes short-term and long-term planning and the development of School District goals and instructional goals;
- Establish and maintain working relationships with agencies and personnel outside the School District to promote the best interests of the School District through contact with legislators, other superintendents, local government leaders, business, etc.;
- Maintain and improve effective School Board-Superintendent relationships by participating in joint seminars and training sessions;
- Delegate responsibility and authority to School District employees as appropriate, define the authority and responsibilities of and effectively evaluate mid-management staff;
- Complete in a timely manner all required school board, state, and federal reports; and

- Assume the ultimate responsibility for all aspects of the School District's operation.



# Superintendent's Employment Contract Handbook



Revised: September 2017



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# Superintendent's Employment Contract Handbook

## Introduction

The superintendent's employment contract is a written agreement between the school board and the superintendent and consists of the terms and conditions of the superintendent's employment. Like all employment contracts, the superintendent's employment contract is an important legal document that should be well-written. Unfortunately, the superintendent's employment contract is often written in haste, over a short span of time, and, in the case of new superintendents, the terms and conditions included in the employment contract are often the same provisions that were included in the previous superintendent's contract regardless of whether those provisions continue to make sense. Each new superintendent's employment contract provides a school board with an opportunity to modify and/or review the contract it has with its chief executive officer, and employment contracts should be tailored to individual superintendents.

Agreeing to an employment contract is an important step in establishing a positive working relationship between the school board and its superintendent; therefore, the terms and conditions of employment must be clear and concise so as not to cause future problems. Ultimately, employment contract negotiations should define the terms and conditions of employment for a specific period of time, thus providing a foundation on which the school board and superintendent can build expectations.

The *Superintendent's Employment Contract Handbook (Handbook)* should be used in conjunction with the MSBA's *Model Superintendent Contract*, which can be found in the MSBA Service Manual, Chapter 3. The *Handbook* content includes an overview of relevant Minnesota laws for employing superintendents, provides a review of the provisions that should be included in superintendent employment contracts as well as discretionary provisions, highlights potential issues in superintendent employment contracts, referred to as "problem clauses," and identifies trends.



## **Relevant Minnesota Law**

Several state laws directly impact superintendent employment contracts. A review of some of the relevant laws is provided below.

### **Employment of a Superintendent**

Pursuant to Minnesota Statutes (M.S.) 123B.143, every school district maintaining a classified secondary school is required to employ a superintendent. School boards are vested with the authority to select and employ a superintendent, but the law does not specify a daily, monthly, or yearly amount of time that the superintendent must work. Thus, superintendents may be employed on a full- or part-time basis and may be employed by a single school district or shared by two or more school districts. Superintendents may also work in combined positions, such as a superintendent/principal.

M.S. 123B.143 also provides that no individual has a right to employment as a superintendent based on order of employment in any school district. According to the law, if two or more school districts agree to purchase or share the services of a superintendent, “the contracting school districts have the absolute right to select one of the individuals employed to serve as superintendent in one of the contracting school districts and no individual has a right to employment as the superintendent to provide all or part of the services based on order of employment in a contracting district.” So, if each of the contracting school districts already employs a superintendent, those school districts have the right to employ either one or neither of the currently employed superintendents.

### **Superintendent’s Ex Officio Status**

According to the same law, the superintendent is an ex officio, or nonvoting, member of the school board. Because of their ex officio member status, superintendents have the right to attend all school board meetings and any other meetings of the school board including committee and subcommittee meetings. As a result, the school board may not exclude the superintendent from attending any of those meetings.

### **Licensure and Continuing Education Requirements**

Minnesota law requires superintendents who work in Minnesota to hold a superintendent’s license from the State of Minnesota. For purposes of licensure, superintendents are supervisory personnel whose jobs require them to “devote 50 percent or more of their time to administrative or supervisory duties over other personnel” (M.S. 122A.15, Subd. 2., and Minnesota Rule (M.R.) 3512.0300).

In 1991, the legislature authorized establishing an alternative path to superintendent licensure. Under the alternative licensure provisions, a candidate for alternative licensure is required to: “...hold a master’s degree in an administrative area; have been offered an administrative position in a school district, group of districts, or an education district approved by the commissioner of education; have five years of experience in a field related to administration; and document successful experiences working with children and adults” (M.S. 122A.27).

Under M.R. 3512.0300, superintendent candidates who are superintendents in other states and who have been prepared in other states may apply to the State of Minnesota for an initial superintendent’s license.

### **Pre-Employment Issues**

Before entering into a superintendent employment contract, the candidate must disclose any previous superintendent employment contract buyout(s) with another school board(s) as well as the terms of the buyout agreement(s) including the amount and purpose of the payments. Disclosure under M.S. 123B.143, Subd. 2 (b) must be in writing, and the data is classified as public data. M.S. 123B.143 also provides that failure of the candidate to disclose the buyout information in a timely manner renders the new employment contract void.

School districts are required by statute (M.S.123B.03) to conduct criminal history background checks on any individuals who are offered school district employment. Therefore, the superintendent should be given notice that his/her offer of employment is conditioned upon the results of the criminal background check.

### **Negotiating and Presenting the Employment Contract**

No exception exists in Minnesota's Open Meeting Law (OML) or other statute that allows a school board to close school board meetings or school board committee meetings to negotiate or discuss the superintendent's employment contract or salary. The exception allowing school boards to close a meeting to consider labor negotiations strategy (M.S. 13D.03) does not apply to superintendents; the exception only applies to negotiations strategy for reaching agreements with bargaining units which have been certified by the Bureau of Mediation Services (BMS) and does not apply to negotiations with employees (such as superintendents) who are not members of or represented by exclusive representatives recognized by the BMS. Also, because the information discussed during negotiations and included in the employment contract (for example "actual gross salary; salary range; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary") is classified as public personnel data (M.S. 13.43, Subd. 2.), the exception to the OML pertaining to non-public data (M.S. 13D.05) does not apply, and the negotiation meetings must be open.

### **Approval of Employment Contract**

Because a superintendent is considered to be a teacher under M.S. 122A.40, Subd. 1., and M.S. 122A.41, Subd. 1. (a), school boards must take action on the superintendent's employment contract at a duly called school board meeting, and the school board's vote must be noted in the official school board meeting minutes. The employment contract must be signed by the superintendent, school board chair, and school board clerk. As a matter of practice, school boards complete the approval with a motion and vote to approve the employment contract.

### **Contract Term and Duration**

The length of a superintendent's employment contract, whether initial or subsequent, is limited to a maximum of three years (M.S. 123B.143). State statute also prohibits school boards from extending the duration of an existing superintendent employment contract, whether by action or inaction, so, "rollover clauses" are prohibited (M.S. 123B.143).

### **Subsequent Employment Contract**

Upon expiration of an existing employment contract, the school board has the discretion to either negotiate a subsequent employment contract or not. The law does not impose a time line requirement for notifying the superintendent of the school board's intent regarding whether to



offer a subsequent employment contract but does limit the parties from beginning to negotiate a subsequent employment contract any sooner than 365 days prior to the expiration of the existing contract. Any subsequent employment contract will take effect upon expiration of the existing contract and is contingent upon the superintendent's successful completion of his/her existing employment contract (M.S. 123B.143).

### **Reopener Clause**

A superintendent's employment contract may be reopened during the term of the employment contract if the parties mutually agree (M.S. 179A.20, Subd. 3.).

### **Legal Expenses**

School districts may reimburse superintendents and any of their other employees for legal expenses incurred by the employees to defend charges against the employees arising from the performance of duties for the school districts (M.S. 123B.02, Subd. 20.).

### **Insurance**

State statute (M.S. 471.6161) allows the school district to use public funds to pay for employee insurance benefits that are part of the school district's group insurance programs. Under the law, the school district has the right to select the insurance carrier; however, the school district may not unilaterally reduce the aggregate value of an existing insurance policy during the term of an employment contract.

Each insurance policy purchased by the school district from qualified insurance providers comes with its own specific terms of use, including eligibility requirements. All insurance-related provisions included in negotiated employment contracts should align with the school district's insurance policies.

### **Leaves**

State and federal law provides many leave options for qualifying employees, including superintendents. Most, but not all, are generally unpaid leaves. Each leave provided in statute contains its own eligibility requirements; however, the school district will typically define the application guidelines and procedures. Some of the leaves governed by statute include, but are not limited to, care of relatives leave under M.S. 181.9413, pregnancy and parenting leave under M.S. 181.941, medical leave under M.S. 122A.40, Subd. 12., leave for court service under M.S. 593.50, Family and Medical Leave (FMLA) under 29 U.S.C. 2601, and military leave under various state and federal statutes. Detailed information regarding each of these leaves can be found in the MSBA Service Manual, Chapter 13, Law Bulletin M. Employment contracts may also include additional discretionary leave provisions. Examples of discretionary leaves are emergency, personal, and bereavement leaves.

### **Residency**

School boards typically prefer to employ a superintendent who will reside in their communities. However, pursuant to M.S. 122A.40, Subd. 3., school districts are prohibited from requiring residency as a condition of employing a teacher, and, since superintendents are considered teachers under M.S. 122A.40, Subd. 1., the same prohibition applies to their employment.

**Tenure Exclusion**

Pursuant to M.S. 122A.40, the continuing contract protections provided teachers under the law do not apply to superintendents; however, the continuing contract protections apply to principals. So, if the superintendent holds a dual-duty position of superintendent/principal, and if he/she has attained continuing contract rights in the school district, the superintendent/principal would retain continuing contract rights for the portion of time dedicated to his/her performance of the principal's duties.

**Termination**

According to M.S. 123B.143, a school board may terminate a superintendent during the term of an employment contract for any of the grounds specified in M.S. 122A.40, Subd. 9. and Subd. 13. Prior to discharge, the superintendent must be notified in writing of the grounds for the proposed discharge; the superintendent has the right to request a hearing, and final school board action may not be taken until after the hearing has been held. The school board may suspend the superintendent without pay pending the conclusion of the hearing and the school board's subsequent determination. Pursuant to M.S. 122A.41 (which applies to "cities of the first class"), a school board may discharge or demote a teacher (superintendent) during the term of an employment contract for any of the grounds listed in M.S. 122A.41, Subd. 6.

## Specific Superintendent Employment Contract Provisions

The *Model Superintendent Contract (Model)* provides a template for school boards and superintendents to use as the basis for negotiating all superintendent employment contracts. The *Model* is a joint effort of the MSBA and the Minnesota Association of School Administrators. As a result, the specific provisions included in the *Model* provide the basis for negotiating the employment contract and meet the basic hiring- and employment-related needs of both parties. The *Model* is organized into eleven articles, some of which include additional sections. Several “NOTES” are provided in the *Model* to call attention to a particular provision, statute, or concept.

Employment contract provisions may be classified as essential or discretionary. Essential provisions are those which the employment contract must address and includes licensure, duration, duties of the superintendent, etc. Other provisions provided in the employment contract are discretionary and include such items as vacation, insurance, payment of dues, etc. The provisions of the *Model* are reviewed below.

### Purpose

An employment contract should include language that identifies the parties to the contract. Sample language has been provided in *ARTICLE I*.

### Applicable Statute

Superintendent employment contracts should include language specifying the statutory authority for employing the superintendent. Sample language has been provided in *ARTICLE II*.

### License

Information relative to superintendent licensure has already been provided. The language in *ARTICLE III* obligates the superintendent to maintain a valid license for the duration of the employment contract, and this language should be included in the employment contract.

### Duration, Expiration, Termination During the Term, Mutual Consent, and Contingency

Superintendent employment contracts should include a provision regarding the duration of the employment contract, and, because superintendent employment contracts may be reopened during their term if the parties mutually agree to do so, a reopener clause should be included as well. *ARTICLE IV, Section 1*, addresses both of these issues and should be included in the employment contract.

In the past, most, if not all, superintendent employment contracts included language suggesting a time line for notifying the superintendent of the school board’s intent to offer or not offer a subsequent employment contract. However, that language (formerly, “Section 2.”) was removed from the *Model* because problems were created for both school boards and superintendents. Because state statute does not include a legal requirement for school boards to notify their superintendents of such intent, the “subsequent contract language” proved to be confusing, contradictory, and difficult to implement. As previously noted, M.S. 123B.143 provides: 1) superintendent employment contracts expire at the end of the term specified in the contracts; 2) school boards may not extend the term of an existing employment contract; and 3) a subsequent employment contract is contingent upon the successful completion of the existing employment contract. Further, while the language in an employment contract may bind a school board, employment contract language cannot supersede statute. As a result, if the superintendent

is offered a subsequent contract, the school board should remove the “subsequent contract language” from it, and such language should not be included in an employment contract for a newly hired superintendent.

Superintendent employment contracts should contain the contract expiration language found in *ARTICLE IV, Section 2*. The *Model* language makes clear that the employment contract expires at the end of its term; neither party has any further claim against the other, and the school district’s employment of the superintendent ceases unless a subsequent employment contract is entered into per state statute. In addition, language in the third sentence allows the superintendent to request the school board to conduct a performance evaluation of his/her performance six (6) to nine (9) months prior to the expiration of the existing employment contract. The language requires a written request and stipulates that the performance evaluation be conducted as provided in M.S.13D.05, Subd. 3. To preserve the school board’s rights, including, the school board’s right to determine the evaluation criteria, form, process, and procedures to be used for the evaluation, the school board would be wise to decline negotiating any further performance evaluation-related language into the employment contract.

As explained earlier, a school board retains the right to terminate the superintendent’s employment for cause during the term of the contract. *ARTICLE IV, Section 3*. makes clear that the superintendent’s employment may be terminated for cause as defined in statute, includes a process for notifying the superintendent of the termination, entitles the superintendent to a hearing before an arbitrator, and outlines the hearing process. An additional protection provided in the *Model* allows the school board to suspend the superintendent without pay pending final determination by the arbitrator. The *Model* language provides much needed protections for the school district and should be included as written.

The superintendent’s employment contract should also include language that would allow for termination of the contract during its term upon the mutual consent of the school board and superintendent. *ARTICLE IV, Section 4*. addresses this issue and should be included.

Many superintendent employment contracts are missing *ARTICLE IV, Section 5*. headed, “Contingency.” Statute provides that the superintendent’s subsequent employment contract is contingent upon the successful completion of the existing employment contract, and, in order to protect the school district, the *Model* language should be included.

## **Duties**

Superintendent employment contracts typically include a provision outlining the superintendent’s duties. *ARTICLE V* addresses the issue and includes language relative to the superintendent’s status as an ex officio, nonvoting member of the school board (M.S. 123B.143). Also, in order to strengthen the school board’s right to assign, the language, “...other duties prescribed by the school board,” should be included (M.S. 123B.143, Subd. 1., (5)). Finally, Teacher Retirement Act (TRA) benefits are not basic benefits of the employment contract; rather, they are governed by statute and TRA rules and/or regulations. If a school board is disciplining a superintendent by removing him/her from the position of superintendent, the school board would have no more responsibility for the superintendent’s TRA benefits than the school board would have if the superintendent resigned. So, a wise school board will avoid negotiating language that would require it to ensure that the superintendent’s duties and assignments are sufficient for TRA benefit service credit at all times.



### **Duty Year and Leaves of Absence Provisions**

Employment contracts should include provisions relative to the superintendent's duty year as well as the number of leaves of absence available and guidelines for using them. Because other leave provisions exist in state and federal statute, the school board should refrain from including too many "leave-related" benefits in the superintendent's employment contract. School districts would be wise to have well-defined written procedures to address employee, including the superintendent, requests for and use of leaves.

The language found in *ARTICLE VI, Section 1.* references a twelve-month duty year and requires the superintendent to be on duty in the event of an emergency.

Paid vacation days should be included in the employment contract. State law does not require school districts to pay for unused vacation days, nor does the law require unused vacation days to be carried over to subsequent years. Language allowing unused vacation days to be carried over to subsequent years and/or language requiring school district payment for unused vacation days is discretionary. The *Model* language in *ARTICLE VI, Section 2.* allows unused vacation days to be carried over but includes language requiring the superintendent to use them within six months or lose them. After all, vacation days were designed to allow employees to get away from their jobs, and, thus, refresh themselves; vacations were never intended to be used as a retirement or severance benefit. If including other language addressing payment for unused vacation days is desired, the parties should negotiate the rate at which the payment for said days will be made (i.e., flat per diem, current daily rate, etc.), address vacation roll-over rights, vacation forfeiture provisions, and maximum allowable vacation accumulation. In doing so, school boards need to keep in mind that payment based on the daily rate of pay will increase as the superintendent's salary increases. Because leaving the school district voluntarily is different from being involuntarily terminated, the third sentence in the *Model* should be included as written. A 2007 Minnesota Supreme Court case validates the need to set clear parameters regarding if or when payment for unused vacation days will be made and how the amount will be paid out (*Lee v. Fresenius*). Additionally, payment of accumulated vacation pay is outside of the statutory severance pay limits of M.S. 465.722. Three language options addressing vacation days, including "Option 1." from the *Model*, are provided below.

Option 1. Section 2. Vacation: The Superintendent shall earn \_\_\_ working days of paid vacation at the beginning of each Contract year. Unused vacation must be taken within six (6) months after the end of the Contract year in which the unused vacation is earned. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated, he/she shall not be entitled to payment for unused earned and accrued vacation days.

[or]

Option 2. Section 2. Vacation: The Superintendent shall earn \_\_\_ working days of paid vacation at the beginning of each Contract year. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated pursuant to ARTICLE IV, Section 3. or if the Superintendent resigns prior to the completion of this Contract for other than health-related reasons, he/she shall not be entitled to payment for unused earned and accrued vacation days.

[or]

Option 3. Section 2. Vacation: The Superintendent shall earn \_\_\_ working days of paid vacation at the beginning of each Contract year. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused vacation days earned and accrued pursuant to the provisions of this section up to a maximum of \_\_\_ vacation days; however, if the Superintendent is involuntarily terminated pursuant to ARTICLE IV, Section 3. or if the Superintendent resigns prior to the completion of this Contract for other than health-related reasons, he/she shall not be entitled to payment for unused earned and accrued vacation days.

A school board should select the option that best meets the school board's and its community's beliefs and expectations regarding school district payment for unused vacation days to exiting superintendents.

Paid holidays should be included in the employment contract. The number of allowable holidays and the name of each holiday should be listed as noted in the *Model (ARTICLE VI, Section 3.)*. Legal holidays are defined in state law (M.S. 645.44, Subd. 5.).

Superintendent employment contracts should include sick leave provisions. The employment contract should include *ARTICLE VI, Section 4.*, which addresses the rate at which sick leave days may be earned and whether the days may be accumulated (if so, the maximum number of allowable, accumulated sick leave days should be listed). If sick leave is allowed to accumulate and if the superintendent is to be paid for those unused days, to avoid public outrage over these large payments often referred to as "golden parachutes," the school board should calculate the potential long-term cost implications of the provision prior to approving the employment contract. Finally, an increasing number of superintendent employment contracts include sick leave provisions whereby the sick leave is "granted," rather than earned. The school board should then address the issue of how any unused sick leave may be recouped in the event the superintendent resigns during the contract year. Two sick leave provision options, including the option from the *Model*, are provided below.

Option 1. Section 4. Sick Leave: The Superintendent shall earn paid sick leave at the rate of \_\_\_ day(s) each working month, and earned sick leave may accumulate to a maximum of \_\_\_ days. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused sick leave days earned and accrued pursuant to the provisions of this section; however, if the Superintendent is involuntarily terminated, he/she shall not be entitled to payment for unused earned and accrued sick leave days.

[or]

Option 2. Section 4. Sick Leave: The Superintendent shall earn paid sick leave at the rate \_\_\_ days(s) each working month, and earned sick leave may accumulate to a maximum of \_\_\_ days. Upon voluntary termination of employment, the Superintendent shall be entitled to payment for any unused sick leave days earned and accrued pursuant to the provisions of this section to a maximum of \_\_\_ days; however, if the Superintendent is involuntarily terminated pursuant to ARTICLE IV, Section 3., or, if the Superintendent resigns prior to the completion of this Contract for other than health-related reasons, he/she shall not be entitled to payment for unused earned and accrued sick leave days.

A school board should select the option that best meets the beliefs and expectations of the school board and its community.

Some employment contracts include a provision allowing the superintendent to carry over a predetermined number of sick leave days to subsequent years, and the language often requires the school district to compensate the superintendent for all or a portion of the unpaid, accumulated sick leave upon separating from the school district. While this idea may initially sound good, the language may have a compounding effect (the days are paid at the superintendent's current daily rate, not at the daily rate in place when the days were earned), thus, often resulting in a much larger lump-sum payment at the time of separation. Also, the parties should avoid negotiating language that would subject the superintendent and the school district to "constructive receipt," and corresponding tax consequences. According to Treasury Regulations, Subchapter A, Sec. 1.451-2, "income although not actually reduced to a taxpayer's possession is constructively received by him/her in the taxable year during which it is credited to his/her account, set apart for him/her, or otherwise made available so that he/she may draw upon it at any time, or so that he/she could have drawn upon it during that taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions." So, contract language that does not include a "risk of forfeiture" of a superintendent's income would be subject to constructive receipt, whereas language which includes a forfeiture risk would not. For example, language limiting the days paid to "unused, accrued/accumulated sick days" would create a "risk of forfeiture" because the superintendent would be paid for only unused sick leave days, as opposed to language specifying that "the superintendent will receive an amount equal to five (5) days of pay for each year of service upon voluntary termination of employment" which creates no forfeiture risk. Therefore, if such language is desired, the school board should seek assistance from a qualified tax professional or the school district's legal counsel to address the issue of "constructive receipt."

Superintendent employment contracts should include a workers' compensation provision. *ARTICLE VI, Section 5.* aligns with state statute, allows a superintendent who is injured on the job and collecting workers' compensation insurance to draw sick leave and receive full salary from the school district, reduces the superintendent's salary by an amount equal to the insurance payments, and allows only the fraction of the days not covered by insurance to be deducted from accrued sick leave. The school board should avoid negotiating additional language that would further obligate the school district.

Bereavement leave is included in the *Model*. The bereavement leave language from *ARTICLE VI, Section 6.* addresses when the days may be used, whether additional days may be granted and by whom, whether the days used will be deducted from accrued sick leave days, and how the term, "immediate family," will be defined. The school board would be wise to avoid expanding the definition of "immediate family" to include other persons, thus, allowing the school board to maintain control over this discretionary leave.

Emergency leave is also included in the *Model*. The terms, "emergency leave" and "personal leave," are often used interchangeably in employment contracts; however, the *Model* takes a specific approach by providing only "emergency leave" language. If included in the employment contract, the language should specify either emergency leave or personal leave (the employment contract should not include both leaves), and use should be limited to situations that are true emergencies. The language found in *Section 7.* should be included as written.

Superintendent employment contracts should include language relative to jury duty and military leaves. *ARTICLE VI, Section 8.*, simply requires that jury duty leave be provided without loss of salary or basic leave allowance and requires the superintendent to remit compensation



received to the school district. Because differences in state and federal requirements exist, the military leave language found in *ARTICLE VI, Section 9.*, should be included in the employment contract as written.

Leave language addressing long-term disability insurance should be included in superintendent employment contracts. Such language is driven by the terms of the school district's group long-term disability insurance policy. Most superintendent employment contracts include a benefit that pays up to  $66 \frac{2}{3}$  of the superintendent's regular salary in the event he/she is unable to perform his/her regular duties due to personal illness and/or disability. *Model* language can be found in *ARTICLE VI, Section 10.* Since the school board is not required to provide disability leave, the school board should take care to not promise more than the disability leave policy provides or than the school district can afford, and the school board should periodically check the policy for changes.

Superintendent employment contracts should include a leave of absence for health reasons. Even though, pursuant to M.S. 122A.40, Subd. 1., the provisions of M.S. 122A.40, Subd. 12., do not apply to superintendents, nothing in statute prevents the parties from including medical leave language in the superintendent's employment contract. If including medical leave language is desired, the language found in *ARTICLE VI, Section 11.* should be utilized because that language limits the superintendent's right to a leave of absence for health reasons as defined in statute, includes procedures for utilizing that leave, and would not create an additional medical leave.

Another topic to include in the employment contract is language stipulating when insurance premiums must be paid by the superintendent in order to remain in the school district's group insurance programs while he/she is on leave. *ARTICLE VI, Section 12.* requires a superintendent on unpaid leave to pay the premiums upon commencing the leave; whereas, the school district would continue to pay the premiums for a superintendent who is on a paid leave until sick leave is exhausted.

## **Insurance**

Insurance benefits are commonly included in the superintendent's employment contract. Health and hospitalization insurance options may include family or single coverage. In addition, some employment contracts include dental insurance options. In order to maintain some control over insurance costs, the school district's contribution to premium costs should be stated as flat dollar amounts as referenced in *ARTICLE VII, Section 1.* School boards are reminded that the Affordable Care Act (ACA) may require school boards and superintendents to revise existing health and hospitalization insurance plans and contribution amounts in order to meet the requirements of this law.

Most superintendent employment contracts also include life insurance benefits. *Model* language can be found in *ARTICLE VII., Section 2.* Under the Internal Revenue Code (IRC) Section 79, an employer (school district) can provide an employee (superintendent) up to \$50,000 of group term life insurance without any tax consequences. However, if the total amount of the group term life insurance policy exceeds \$50,000, the imputed cost of coverage in excess of \$50,000 must be included as income and is subject to Social Security and Medicare taxes. Additionally, because eligibility for insurance coverage is governed by the terms and conditions of the policy purchased and because the terms and conditions may change, school boards should periodically check the policies for changes.

Another topic to address in the employment contract is long-term disability insurance (*ARTICLE VII., Section 3.*). *Model* language requires the school district to provide and pay for



long-term disability insurance under the school district's group policy. Again, because eligibility for long-term disability insurance coverage is governed by the terms and conditions of the policy purchased and because the terms and conditions may change, school boards should regularly check the policies for changes.

Superintendent employment contracts should also include language relative to eligibility for insurance (*ARTICLE VII, Section 4.*). The employment contract should include language specifying that eligibility is governed by the terms and conditions of the policy purchased, and, since the policies purchased may change, language which promises or guarantees specific coverage under the school district's group insurance policies should be avoided. Also, superintendent employment contracts should include language such as that in *ARTICLE VII, Section 5.*, holding the school district harmless in the event the superintendent's insurance benefits are denied.

Some superintendent employment contracts include language that allows the superintendent to be paid cash in lieu of a benefit such as health insurance. Contract language allowing the superintendent to be paid cash instead of a health benefit creates another option, and, if another option exists, the benefit in question would no longer be considered a health benefit; rather, that benefit would then become taxable to those who choose it. The Internal Revenue Service (IRS) has an unpublished opinion stating that if a "cash-in-lieu-of option" exists, then all other school district employees would also have to pay taxes on the benefit. Unless the school district has established a qualified "Cafeteria Plan" per IRC Section 125, such language may have unintended tax consequences not only for the superintendent but also for all of the school district's employees who are eligible for the benefit. For this reason, the school board should seek input from a qualified benefit and/or tax professional or the school district's legal counsel prior to including such language in the employment contract.

### **Other Benefits**

The *Model* includes provisions that address other discretionary benefits such as tax-sheltered annuities, vehicle use, and attendance at conferences and meetings. Each item is addressed below.

Superintendent employment contracts usually include language relating to tax-sheltered annuities. Tax-sheltered annuities are covered under both state and federal law and are regulated by the IRS. The number and identity of 403b vendors is a term and condition of employment, which is subject to bargaining (M.S. 123B.02, Subd. 15.), and the allowable employer contribution amount is one-half ( $\frac{1}{2}$ ) of the available elective deferral permitted per year per employee under the IRC (M.S. 356.24, Subd. 1.). Because the elective deferral permitted per year is set by the IRC and the deferral amount will likely increase, the school board should avoid including language that would require the school district to automatically pay the maximum allowable amount or to contribute based on a percentage of salary. Again, flat dollar amounts are preferred. Due to the complexity of 403b-related issues, *ARTICLE VIII, Section 1.* is limited to a simple statement that the superintendent is eligible to participate in a tax-sheltered annuity plan, and the plan offered must comply with state and federal laws and school district policy. School boards should seek assistance from a qualified plan administrator or the school board's legal counsel prior to negotiating additional 403b language.

Superintendents are expected to be visible in their schools and communities, and, for this reason, most superintendent employment contracts include language that allows the school district to compensate the superintendent for the use of his/her personal vehicle for business

purposes. Two options are provided in *ARTICLE VIII, Section 2.*, and both options meet the requirements provided in statute (M.S. 471.665, Subds. 1. and 3.). Language that allows the superintendent to combine the two options and/or language that states the school district will provide a school district-owned vehicle for the superintendent's personal use is prohibited under opinions rendered by the Minnesota Attorney General, and state law imposes restrictions on the superintendent's personal use of a school-district-owned vehicle. In addition, the parties should be aware of any potential tax complications prior to negotiating vehicle-use language.

School boards typically encourage the continuing professional growth of their superintendents by paying for the superintendent's attendance at and participation in professional conferences and workshops. The employment contract should also include language which requires the superintendent to submit all conference- and meeting-related expenses for school board approval as provided in *ARTICLE VIII, Section 3.*

### **Salary**

All superintendent employment contracts include salary provisions. *ARTICLE IX* provides two options relative to salary language. The first option specifies the amount of salary the superintendent will be paid each contract year, and the second option provides the annual salary amount for the first contract year and requires the school board and superintendent to agree to an amount for each subsequent contract year by a date certain. As previously explained, unlike teacher master agreements, the superintendent's employment contract may be reopened during the term of the contract upon the mutual consent of the parties (M.S. 179A.20, Subd. 3.).

### **Other Provisions**

The *Model* includes language addressing other provisions commonly included in the superintendent's employment contract, such as outside activities, indemnification, provision of counsel, dues, and medical examination.

While superintendents are expected to devote their full time, attention, and energy to the affairs and activities of the school district, some superintendents serve as consultants to other school districts or engage in other activities not related to their regular employment. *ARTICLE X, Section 1.* stipulates that the outside activities must not interfere with the superintendent's ability to perform his/her regular duties and requires school board approval of any activity that would provide a salary, fee, or honorarium and should be included as written.

Most superintendent employment contracts include language addressing indemnification and provision of counsel, and some of them include "liability insurance" provisions; however, prior to negotiating employment contract language, school boards should know the difference between these two issues. M.S. 466.06 gives each school district the option to purchase liability insurance for their employees (superintendent) for damages resulting from an action arising out of the employees' (superintendent's) performance; however, school boards are not required to purchase liability insurance for the employees (superintendents). Under M.S. 466.07, if an action is brought or a claim is made against the superintendent for an action arising out of or in connection with his/her employment and the superintendent is acting within the scope of his/her employment or official duties, the school district is required to defend and indemnify the superintendent to the extent provided by law; however, indemnification does not include malfeasance in office or willful or wanton neglect of duty. *ARTICLE X, Section 2.* addresses the issue of indemnification and provision of counsel only. Since school districts are not required to provide liability insurance, which currently is limited to \$1,500,000 per single incidence (M.S. 466.04), any requests from the

superintendent for additional coverage should be resisted due to the impact an increase would have on a settlement in the event of a lawsuit. School boards would be wise to resist expanding the indemnification language beyond what is provided in the *Model*.

State law allows the school district to pay dues for its superintendent to belong to professional, educational, economic development, community, and civic organizations (M.S. 123B.02, Subd. 24.). Dues payments should be limited to those organizations that serve the best interests of the school district; therefore, the school district should only pay the membership dues for those organizations which are required, directed, or permitted by the school board as provided in the *Model* (*ARTICLE X, Section 3.*). Because this payment is discretionary, any additional language relative to dues that would cost the school district more or limit the school district's discretion should be avoided.

Unlike other school district employment contracts, some superintendent employment contracts include language that requires the superintendent to have a comprehensive medical examination on a predetermined basis. The requirement is usually included due to the superintendent's status as the chief executive of the school district and the school board's concern relative to his/her ability to perform the duties of the position. However, under the privacy regulations provided in state and federal law, health-related information that is maintained is considered personnel data and classified as private data on individuals. *ARTICLE X, Section 4.* addresses this issue by requiring the superintendent to provide the school board chair with a summary document from the physician certifying the superintendent's fitness to perform his/her duties. The language should expressly limit the payment for the comprehensive medical examination to that amount which is not covered by the school district's group health and hospitalization insurance plan. While such language is included in the *Model*, an increasing number of superintendent employment contracts do not include this discretionary provision.

Other employment contract provisions agreed to by the school board and superintendent should be included in separate sections within this article. Examples of language that could be addressed in this area are provided in *ARTICLE X, Section 5.* Also, the *Model* does not include specific "severance" language; however, "*NOTE 10,*" and M.S. 465.72 and M.S. 465.722 provide guidance regarding the topic. Typically, superintendents fall within the definition of "highly compensated employee"; therefore, the school board should pay particular attention to M.S. 465.722 when considering the inclusion of severance-related language.

### **Severability**

Superintendent employment contracts should also include severability language. *ARTICLE XI* stipulates that if any employment contract provision is found invalid, that determination would not have an effect on the remaining contract provisions.

## **Ten Facts for Employing a Superintendent Under Minnesota Law**

1. School boards are authorized by statute to select and employ a superintendent.
2. The superintendent is an ex officio, nonvoting member of the school board.
3. The school board may not meet in a closed session to discuss or negotiate the terms and conditions of the superintendent's employment contract.
4. A school board must take action at an open meeting to approve the superintendent's employment contract.
5. The superintendent's employment contract is a public document.
6. The length of the superintendent's employment contract, whether an initial contract or subsequent contract, may not exceed three years.
7. Upon expiration of the existing employment contract, the school board has the discretion to either negotiate or not negotiate a subsequent employment contract.
8. State law does not provide tenure protection for the superintendent.
9. School boards may terminate a superintendent during the term of an employment contract for grounds specified in statute.
10. School districts are authorized to pay reasonable work-related expenses.



## **Problem Clauses**

Unfortunately, superintendent employment contracts are not immune from the inclusion of irresponsible, illegal, or costly language. The ideas proposed for inclusion in employment contracts come from a variety of sources, including the incumbent's employment contract, neighboring school districts, model contracts, school law attorneys, the private sector, proposals from the parties, etc.

Because negotiating an employment contract is a "give and take situation," school boards should carefully scrutinize the language of all items presented prior to including them in the contract. School boards should be aware that some language may not be appropriate or desirable from the school board's perspective, and, even though the proposed idea may be "recommended," the language may actually not be good for either party. Some of the provisions that may lead to unintended consequences are provided below.

### **Beneficiary Language**

Because employees (including superintendents) are anxious to ensure that the benefits they receive pass on to their beneficiary(ies), employment contracts often include beneficiary language which is triggered by a variety of events. However, the school board should keep in mind that the benefits provided in a superintendent's employment contract are provided for the benefit of the superintendent during his/her employment and, only if negotiated, upon his/her retirement; they are not intended for anyone else. Therefore, if the parties determine such language is desired, the school board should work with its legal counsel to ensure the language clearly limits and identifies the qualifying event upon which benefits will be paid to the superintendent's beneficiary(ies).

### **Retirement**

Most employment contracts provide retirement provisions; however, negotiations relative to retirement often result in language that is costly and may even be illegal. Problematic retirement-related language commonly found in superintendent employment contracts includes mandatory retirement age, early retirement incentive, severance for highly compensated employees, payment for unused, accumulated sick leave, and payment of retiree health insurance premiums. Information addressing each issue is provided below.

Under state and federal law, no mandatory retirement age exists, so school boards and superintendents should avoid negotiating language that requires superintendents to retire by a specific age, such as "by age 60 or 65." However, Minnesota law allows eligible teachers (superintendents) to retire prior to "normal retirement" age under M.S. 122A.48. The statute defines "eligibility," provides an application deadline, and includes other important information that school boards should know prior to negotiating retirement-related contract language. Because an early retirement option exists in statute already, including additional language in the employment contract is unnecessary.

Under M.S. 465.722, a highly compensated employee's severance pay is restricted to an amount equal to six months of wages. Severance pay is discretionary, so school districts are not required to provide it. The school board should consult legal counsel prior to including severance pay language in the employment contract.

Superintendent employment contracts often include language requiring the school district to pay for the superintendent's and, perhaps, his/her dependents' health and hospitalization insurance

premiums for a specified length of time after employment has ceased. Language that requires the school district to pay for retiree health insurance benefits should be avoided due to the long-term cost implications of providing the coverage. In addition, the Government Accounting Standards Board Summary Statement No. 45 (GASB 45) requires school districts to conduct actuarial studies of the long-term fiscal commitments of paying for these benefits (at the school district's expense) to ensure the school district's ability to pay said costs over time.

In Minnesota, the TRA was enacted by the Legislature as a means to allow qualified teachers, including superintendents, to provide for their retirements. TRA also allows superintendents and their school districts to make contributions to the superintendent's retirement fund. Since calculating retirement pay can be complex, questions and concerns regarding retirement plan design specifics are best handled by TRA professionals. In addition, TRA allows superintendents who are receiving retirement benefits to resume superintending under the provisions provided in M.S. 354A.31.

Due to the complexity of retirement-related issues, the school district should consult a qualified retirement professional or the school district's legal counsel prior to negotiating language relative to these, or any other, retirement provisions.

## Trends

Over the years, new ideas emerge that are written into employment contracts. Trends represent ideas that are not included in the *Model*, so school boards should carefully weigh the advantages and disadvantages of including them in employment contracts. Some current trends include language relative to performance pay, performance evaluation, rehiring of retired superintendents, employing superintendent/principals, and other superintendent employment contracts. Each item is addressed below.

### Performance Evaluation

State law does not require a school board to evaluate its superintendent's performance. However, superintendent performance evaluation is an important activity that should be conducted at least annually as a best practice. The evaluation process and procedures used are a matter of local policy. School boards should control when and how often the evaluation(s) will be held, what criteria and tools will be used, and what evaluation-related procedures will be followed. As a result, the *Model* does not provide sample language relative to performance evaluation other than that found in *ARTICLE IV, Section 2*. School boards would be wise to avoid expanding that *Model* language because language in the superintendent's employment contract can only be changed if the parties mutually agree; thus, the school board's inherent managerial rights would be limited. If the parties negotiate performance evaluation-related language beyond that which is found in *ARTICLE IV, Section 2.*, the language should be limited to a general statement only, and the specific details outlining the evaluation criteria, indicators, measures, evaluation instrument, ratings system (if used), evaluation process, time lines, and procedures should be determined in advance by the school board and be included in policy.

Pursuant to M.S.13D.05, Subd. 3. (a), a school board may close a portion of a meeting to evaluate the superintendent's performance. However, the meeting must be open at the request of the subject of the meeting (superintendent), and the closed meeting must be recorded. So, including language in the employment contract addressing the issue of closing a meeting for performance evaluation purposes is not necessary. Additionally, state statute also requires the board to summarize its conclusions regarding the evaluation at its next open meeting. Finally, during the closed meeting, the school board is prohibited from taking a "straw vote" or otherwise trying to get a sense of where the members stand on offering a subsequent employment contract and discussing salary or the specifics of a subsequent employment contract, and the school board is required to record the closed meeting, so, evidence of any illegal discussion will exist.

### Performance Pay

A few employment contracts include performance pay provisions. The goal of providing performance pay is to make the superintendent accountable for outcomes. Since superintendent employment contracts already include salary provisions, performance pay provisions are typically considered additional compensation. For example, the superintendent may receive all, part, or none of the compensation set aside for reaching specific, predetermined, and mutually agreed upon targets and/or expectations in addition to receiving all of his/her basic compensation. The *Model* does not include sample language addressing the issue of performance pay. MSBA recommends school boards exercise caution when considering performance pay-related language proposals to avoid problems. If performance pay-related language is included in the employment contract, the language should require the parties' mutual agreement, be general

but clear enough to allow the superintendent to know what's expected of him/her while maintaining the school board's inherent management rights and authority, and be included in the employment contract. For purposes of transparency, details outlining the mutually agreed upon goals and/or expectations, measures of progress and/or achievement, timelines for accomplishing the goals/expectations, etc., should be included in the employment contract. As previously discussed, a performance evaluation may occur in a closed session; however, no statute exists that would allow the school board to close a meeting to discuss performance pay.

As an aside, school districts are prohibited from paying "year-end bonuses" to employees for past services; as a result, school boards should avoid provisions that allow "bonus pay."

### **Retired Superintendent**

Minnesota law allows superintendents who have retired and are receiving retirement benefits under TRA to return to work as a superintendent. For a variety of reasons, many school boards are choosing to hire retired superintendents to fill their vacancies for both short and extended periods of time. Two options for retired superintendents seeking to return to work are provided under M.S. 354.44. Specifics concerning each option can be found in statute.

Due to the complexity of the issue and to avoid mistakes that could impact the superintendent's TRA payments over time, the superintendent should seek assistance from TRA prior to being employed as a retired superintendent.

### **Superintendent/Principal**

An increasing number of school districts are opting to hire superintendents who have additional duties as a principal. Before the dual-duty position is offered and the employment contract is signed, the school board should do its homework. The employment contract should address the percentage of time to be spent performing the duties of each position. Oftentimes, superintendents in these positions find completing their superintendent duties to be difficult due to the amount of time the principal duties require. In addition, because principals have continuing contract rights under M.S. 122A.40 and, if so, retain seniority rights in the school district, if the school board determines not to offer the superintendent/principal a subsequent employment contract after he/she has attained continuing contract rights in the school district, he/she would retain the right to that portion of the time identified to perform the principal's duties.

### **Other Superintendent Employment Contracts**

School boards should work very hard to maintain their inherent managerial rights and functions. Superintendents should be employed by and be directly responsible to local school boards; thus, superintendent employment contracts that do not support that relationship should be avoided because they leave school boards at risk of being unable to control their own futures and increase the school district's risk of liability. When school boards contract with an outside sub-contractor, the superintendent becomes an employee of the sub-contractor rather than the school district. Although a legal option, such contracts typically include ambiguous language and lack the clarity and protections for the school district that can be found in the *Model*. Good employment contracts will 1) outline the duties to be performed by the superintendent, 2) define the superintendent's status as an ex officio member of the school board, 3) require the superintendent to abide by the policies, regulations, rules, and procedures established by the school board and the State of Minnesota, and 4) establish that the superintendent performs under the direction of the school board, etc., as provided in *ARTICLE V*. Other superintendent



employment contract options not addressed in the *Model* should be reviewed by the MSBA and/or the school district's legal counsel early on to protect the school board's inherent managerial rights and the school district.

## **Miscellaneous**

### **Cell Phones and Other Electronic Devices**

Some superintendent employment contracts include provisions regarding school district compensation for cell phones and other electronic devices for the superintendent's use outside of the school district's premises in the performance of his/her duties. Prior to the passage of the Small Business Jobs Act (SBJA) (H.R. 5297), these electronic items were considered "listed property" under IRC 280F (d) (4) and required employees to account for their business and personal use of said devices. However, effective taxable years beginning after December 31, 2009, employer-provided cell phones and other electronic devices are no longer considered "listed property." Unfortunately, the SBJA did not address the proper tax treatment of said devices. Therefore until the IRS provides guidance, school boards are wise to consult with qualified tax professionals prior to negotiating employment contract language that provides superintendents with a monthly allowance for communication purposes.

### **Moving Expenses**

Some superintendent employment contracts include language requiring the school district to pay the new superintendent's transportation-related moving costs up to a specified amount. While no statute specifically authorizes payment of a superintendent's moving expenses, a part of the school board's implied powers found in M.S. 123B.02, Subd. 1. allows school boards to pay the moving expenses of the superintendent on a one-time basis as part of the superintendent's compensation (Minnesota Attorney General Opinion 107-a-3). If moving expenses-related language is included in the employment contract, 1) to ensure accountability, the agreed upon costs should be capped and, 2) as a condition of reimbursement, the superintendent should be required to submit valid receipts as proof of payment.

## **School Attorneys**

Employment contracts are legal documents, and the provisions included in them should be well understood by both the school board and superintendent. Because this *Handbook* and the *Model* cannot possibly address every item superintendents will request to be included in their employment contracts, school boards should consult with MSBA or qualified school attorneys during such negotiations. The school district's legal counsel is an important contact for a school board. Legal counsel has the depth of knowledge and experience needed to identify illegal and problem language and suggest improvements.

## **Conclusion**

The *Handbook* has been designed to provide guidance to school boards as they negotiate superintendent employment contracts. The information provided should assist school boards in negotiating employment contract language that is fair to both parties. Finally, MSBA staff is available to answer school board members' superintendent employment contract-related questions and, if asked, provide a detailed, written analysis of the superintendent's employment contract.

